(28,810)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 320.

R. H. ARNOLD, DOING BUSINESS AS R. H. ARNOLD COMPANY, AND GLOBE INDEMNITY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA FOR THE USE OF W. B. GUIMARIN & COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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a UNITED STATES OF AMERICA, *ss:*

At a United States Circuit Court of Appeals for the Fourth Circuit begun and held at the court-house, in the city of Richmond, Virginia, on the first Tuesday in February, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present:

Hon. Martin A. Knapp, Circuit Judge.
Hon. Charles A. Woods, Circuit Judge.
Hon. Edmund Waddill, Jr., Circuit Judge.

Among other were the following proceedings, to-wit:

R. H. ARNOLD, Doing Business as R. H. Arnold Company, and GLOBE INDEMNITY COMPANY, Plaintiffs in Error,

versus

THE UNITED STATES OF AMERICA for the Use of W. B. GUIMARIN & COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

Be it remembered that heretofore, to-wit, on September 19, 1921, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows:

1 TRANSCRIPT OF RECORD.

Filed September 19, 1921.

Caption.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, To wit:

In the District Court.

At Law.

At a District Court of the United States for the Eastern District of South Carolina begun and held at the court house, in the city of Charleston, S. C., on the first Tuesday of June, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and twenty-one.

Present: The Honorable Henry A. M. Smith, United States District Judge for the Eastern District of South Carolina.

Among other were the following proceedings:

THE UNITED STATES to the use of W. B. GUIMARIN and E. R. HEYWARD, Co-partners, Trading as W. B. Guimarin & Company, Plaintiffs,

versus

R. H. ARNOLD, Trading as R. H. Arnold Company, and GLOBE INDEMNITY COMPANY, Defendants.

Amended Complaint.

Filed November 20, 1920.

The plaintiffs above named, complaining of the defendants, allege:

1. That W. B. Guimarin and E. R. Heyward are co-partners trading as W. B. Guimarin and Company, with their principal place of business in the city of Columbia, District and State aforesaid.

2 2. That the defendant, Globe Indemnity Company is a corporation chartered and existing under the laws of one of the States of the United States, and the defendant, R. H. Arnold, is a resident of Washington, D. C., maintaining offices and doing business there under the name of R. H. Arnold Company.

3. That on the 3rd day of October, 1917, R. H. Arnold, doing business as R. H. Arnold Company, entered into a contract with the United States Government under which he agreed to erect and furnish materials for the erection of a certain store house for the United States Government in the United States Navy Yard at Charleston, South Carolina.

4. That on the 4th day of October, 1917, the plaintiffs above mentioned and R. H. Arnold entered into a contract in writing, a copy of which is hereto attached and marked "Exhibit A," by which the plaintiff agreed to furnish labor, materials, tools, appliances and other things required for all plumbing, heating, roof drains, and fire service for the said building above mentioned, for the sum of ninety-nine hundred fifty ($9,950) dollars.

5. That it was further agreed between the plaintiff and R. H. Arnold that should the said R. H. Arnold, during the progress of said work, direct plaintiffs to make additions to said contract, that the plaintiffs should make the said additions and that the value of the work added thereby should be added to the contract price at fair valuation.

6. That under the said contract between plaintiffs and R. H. Arnold, it was agreed that R. H. Arnold should pay to the plaintiffs the said sum of money in payments on the first of each month as the work progressed, amounting to ninety per cent of the value of the completed work as based on the contract price, and the remaining

ten per cent thirty days after the completion of the said sub-contract and the acceptance of same by the owner or architect.

7. That thereafter plaintiffs proceeded to furnish said
3 labor, material, tools, appliances and other things under the said contract and that under the direction of the said defendant, plaintiffs have made additions to the said materials and labor for the said contract work, so that the total amount due the plaintiffs by the said R. H. Arnold Company upon the completion of the said contract and the additions thereto was the sum of thirteen thousand six hundred eighty-eight and 17/100 ($13,688.17) dollars.

8. That the payments which plaintiff has received from the said R. H. Arnold Company from time to time amount only to the sum of five thousand nine hundred sixty-two and 61/100 ($5,962.61) dollars, leaving a balance due plaintiffs of seven thousand seven hundred twenty-five and 52/100 ($7,725.52) dollars, which said sum has been due since on or about the 24th day of October, 1918, and for which due demand for the payment of same has been repeatedly made on the said R. H. Arnold Company, but he has refused and failed to pay the same.

9. That at the time of the execution of the contract between R. H. Arnold Company and the United States Government, above referred to, in accordance with the Act of Congress in such cases made and provided, the defendant, Globe Indemnity Company, entered into a bond in the sum of sixty-five thousand one hundred ninety ($65,190) dollars, dated the 3rd day of October, 1917, a copy of which is hereto attached and marked "Exhibit B," wherein, among other things, the said Globe Indemnity Company guaranteed the faithful performance of his contract on the part of R. H. Arnold and that he should promptly make payments to all persons supplying him with labor and materials in the prosecution of the work above mentioned.

10. That the contract between the United States Government and the defendant, R. H. Arnold, has been completely performed and finally settled, and final settlement and payment on the account of the said R. H. Arnold was authorized on the 17th day of April, 1920, and that more than six months and less than one year has elapsed since such completion and final settlement, and the
4 United States has never entered suit on said bond.

11. Further, that plaintiffs have applied for and have been furnished with a certified copy of the said contract and bond, and have been authorized to bring suit in the name of the United States as provided in the Act of Congress entitled "An Act for the Protection of Persons Furnishing Materials and Labor for the Construction of Public Works."

Wherefore, plaintiff demands judgment against the defendants in the sum of seven thousand, seven hundred twenty-five and 56/100 ($7,725.56) dollars, together with interest on same at the legal rate from the 24th day of October, 1918.

TOMPKINS, BARNETT & McDONALD,
Attorneys for Plaintiff.

Columbia, S. C., November 3, 1920.

"EXHIBIT A."

NOTE.—All Sub-Contractors are cautioned to thoroughly examine and read the general contract and all plans and specifications, from beginning to end, when bidding on any sub-contract, and as their particular branch of work may be scattered through different parts of the plans and specifications and as all the sub-contracts we enter into contemplate entire completion of each particular branch of sub-contract work, no matter where, or how shown or specified on the plans or in the specifications, unless especially excepted by written agreement.

R. H. ARNOLD, DOING BUSINESS UNDER THE NAME OF R. H. ARNOLD COMPANY.

Standard Form of Subcontract.

Sub-Contract for—all plumbing, heating, roof drains and fire service, in accordance with Specifications No. 2469.

Except only—Marble and slate partitions and hardware and doors for same.

Sub-Contractor—W. B. Guimarin and Company, Columbia, South Carolina.

Owner of Building—Navy Department, U. S. Government.

Location of Building—Navy Yard, Charleston, South Carolina.

Architect—Bureau of Yards & Docks, Navy Dept., U. S. Government.

Date of this Sub-Contract—October 4, 1917.

General Contract dated—October 3rd, 1917, and on file in office of the U. S. Government.

Sub-Contract Price—Nine Thousand Nine Hundred Fifty ($9,950.) Dollars.

This Agreement made and entered into the days and year above written, between R. H. Arnold, doing business under the name of R. H. Arnold Company, hereinafter designated as General Contractor, and the above named Sub-Contractor.

Witnesseth, First. That the said Sub-Contractor for the consideration above mentioned, agrees that he will, as soon as the above mentioned building is ready for the commencement of the work under this sub-contract, well and truly furnish all labor, material, tools, appliances and other things required for, and to cause to be prosecuted

to completion as rapidly as the conditions of said building will admit all the above mentioned sub-contract work for the said building above mentioned, described in plans and specifications prepared for said building by the above mentioned architect, at the times and in the manner and under all the conditions provided in each and every part of said plans and specifications, and in a general contract for the erection of said building, between the above named owner and the General Contractor; which said contract, together with said plans and specifications are so filed and above mentioned; said contract plans and specifications hereby made a part of this agreement; and the said Sub-Contractor agrees to save the said General Contractor free and harmless from any and all liability and all damages which may accrue against or upon the General Con-
6 tractor through or as the result of any wrongful act, neglect or default of said Sub-Contractor or his employees by any person whatsoever.

Second. That the General Contractor will, in consideration of the said covenants and agreements being strictly performed and kept by the said sub-contractor, as hererinabove mentioned, well and truly pay, or cause to be paid, unto the said sub-contractor the said sum of money above mentioned as the sub-contract price.

In the Manner Following: In payments on the first of each month as the work progresses amounting to ninety per cent of the value of the completed work, as based on the above contract price, and the remaining ten per cent thirty days after the completion of this sub-contract and acceptance of same by the above named owner or architect, but in the event that the General Contractor should deem himself insecure by reason of a possibility that the laborers or material men of the Sub-Contractor may file claims of liens upon said property, or may give to the Owner notices to withhold money from the General Contractor. then the General Contractor may at his option withhold further payments until furnished with receipts or releases from all such material-men or laborers.

Third. Should the General Contractor at any times during the progress of said works direct in writing any alterations of, deviations from, additions to, or omissions from the said sub-contract work, then the said contract work shall be done by the Sub-Contractor in the manner so directed. Such changes shall in no way render invalid this contract; but the value of the work omitted shall be deducted from, and the value of the work added shall be added to, this contract price at fair valuations, using the contract price on the whole of the sub-contract work as a basis for computing such valuations. No agent of the General Contractor shall have the power to direct or permit any such alterations, deviations, additions or omissions except in writing.

Fourth. Time is the essence of this contract and the sub-contractor agrees to perform his work at such times and in such
7 manner as not to delay the completion of the building within the time specified in the general contract.

Fifth. The Sub-Contractor is an independent contractor and in no sense an employ-e of the General Contractor; and in performing and completing this contract, the sub-contractor shall have all the privileges and rights, and be charged with all of the duties and obligations, accorded to or placed upon an independent contractor by law.

Sixth. The Sub-Contractor agrees that he has taken out and will maintain at his own cost, insurance covering all his employ-es employed in the execution of this sub-contract, with an insurance carrier authorized to write such insurance, covering his full liability under the laws of the State of South Carolina. Sub-contractor also agrees to deliver to General Contractor immediately upon the execution of this contract, a writing from the agent of such carrier, undertaking to serve upon the General Contractor copies of all notices given by such carrier to the sub-contractor and a similar written statement shall be delivered to General Contractor immediately upon the issuance of any policy during the existence of this sub-contract In the event of the failure of the Sub-contractor to comply with any of the provisions of this paragraph, the General Contractor may take out and pay for such insurance as he deems necessary to protect himself, and the cost thereof shall be immediately repaid by the Sub-Contractor.

Seventh. Should the Sub-Contractor at any time fail to perform said work in accordance with this contract, or as rapidly as the General Contractor shall deem proper, and should such failure continue for three days after service of a written notice from the General Contractor to the Sub-Contractor, specifying the particulars of such failure, served personally or mailed to the Sub-Contractor, or posted on said structure, then such failure and such continuance thereof shall constitute a breach of this contract by the sub-contractor, and such breach shall entitle the General Contractor to terminate this contract and complete said work himself, or cause the same
8 to be completed by others, and such breach shall also entitle the General Contractor at his option to treat such failure as partial breach, and permit him by himself or through the employment of others, to take charge of the work and make good such failures; and either in case of such termination or of such partial breach, the Sub-Contractor agrees to immediately repay to the General Contractor the cost to the General Contractor of all such work, and also all other damages sustained by the General Contractor on account of such failure, which said cost and damage shall also be an offset against any money owing to the Sub-Contractor from the General Contractor; and in any such case, the material of the sub-contractor on the premises may at the option of the General Contractor be used or rejected.

Eighth. As to words in this contract, referring to parties hereto, the masculine shall be synonymous with the feminine or neuter, and the singular shall be synonymous with the plural, in order, if necessary, to completely effectuate such reference.

In witness whereof, the said Sub-Contractor and the said General Contractor each has hereunto set his hand and seal, the day and year first above written.

R. H. ARNOLD, DOING BUSINESS UNDER THE NAME OF R. H. ARNOLD CO.,
By R. H. ARNOLD. [SEAL.]
W. B. GUIMARIN & CO., [SEAL.]
By E. H. HEYWARD. [SEAL.]

Witness-:
F. GOLDEN,
As to R. H. Arnold Co.
L. R. COOPER,
As to W. B. Guimarin Co.

(Exhibit "B," Bond, is set out in full in Bill of Exceptions.)

9 *Answer of R. H. Arnold, Trading as R. H. Arnold Company.*

Filed December 16, 1920.

To the United States District Court for the Eastern District of South Carolina:

The defendant, R. H. Arnold, trading as R. H. Arnold Company, answering the complaint of the plaintiffs herein, says:

1. He admits the allegations of paragraph 1.

2. He admits the allegations of paragraph 2.

3. He admits the allegations of paragraph 3.

4. He admits the allegations of paragraph 4.

5. He admits the allegations of paragraph 5 except that he says that the method of arriving at the valuation is fixed in the contract and particularly in paragraph "Third" thereof.

6. The allegations of paragraph 6 are substantially true, but the defendant refers to the contract itself for the exact terms thereof.

7. This defendant admits that plaintiff furnished certain labor, materials, tools and appliances and other things under the said contract, but denies the remaining allegations in said paragraph.

8. Defendant denies the allegations of paragraph 8 except he admits the payments and credits to the amount of $5,962.61 therein alleged.

9. This defendant admits the allegations of paragraph 9, except that he says the guarantees of said bond are as therein set out.

10. This defendant admits that the contract between the United States Government and him has been completely performed. He

denies that final settlement and payment on account of the said R. H. Arnold was authorized on the 17th day of April, 1920, or at any other time and denies that more than six months or any other time and less than one year or any other time had elapsed since such completion and final judgment or since such final settlement and admits that the United States has not entered suit on said bond. This defendant says that the Court is without jurisdiction because no final settlement has been made by the United States under said contract.

11. This defendant has no personal knowledge of and therefore denies that the plaintiff has applied for and has been furnished with a certified copy of the contract and bond. He denies that plaintiff has been authorized to bring suit and denies the other allegations of paragraph 11.

Wherefore, defendant demands judgment against the plaintiffs that the complainant herein be dismissed with his costs of this action.

EDWARD P. MOREY AND
WM. HENRY WHITE,
Attorneys for Defendant.
HAGOOD, RIVERS & YOUNG,
Of Counsel.

(Answer verified.)

Answer of Globe Indemnity Company.

Filed December 16, 1920.

To the United States District Court for the Eastern District of South Carolina:

The defendant, Globe Indemnity Company, answering the complaint of the plaintiff herein, says:

1. This defendant has no knowledge of the allegations of paragraph 1 and therefore denies the same and calls for proof thereof if they are deemed material.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are admitted.

4. The defendant has no knowledge of the allegations of paragraph 4 and therefore denies the same and calls for strict proof thereof if they are deemed material.

5. This defendant has no knowledge of the allegations of paragraph 5 and therefore denies the same and calls for strict proof thereof if they are deemed material.

6. This defendant has no knowledge of the allegations of paragraph 6 and therefore denies the same and calls for strict proof thereof if they are deemed material.

7. This defendant has no knowledge of the allaegations of paragraph 7 and therefore denies the same and calls for strict proof thereof if they are deemed material.

8. This defendant has no knowledge of the allegations of paragraph 8 and therefore denies the same and calls for strict proof thereof if they are deemed material.

9. This defendant admits the allegations of paragraph 9, except it says the guarantees of said bond are as therein set out.

10. This defendant admits that the contract between the United States Government and R. H. Arnold has been completely performed. It denies that final settlement and payment on account of the said R. H. Arnold was authorized on the 17th day of April, 1920, or at any other time, and denies that more than six months or any other time and less than one year or any other time has elapsed since such completion and final settlement or since such final settlement and admits that the United States has not entered suit on said bond. This defendant says that the court is without jurisdiction because no final settlement has been made by the United States under said contract.

12 11. This defendant has no personal knowledge of and therefore denies that plaintiff has applied for and has been furnished with a certified copy of the contract and bond. It denies that plaintiff has been authorized to bring suit and denies the other allegations of paragraph 11.

Wherefore, defendant demands judgment against the plaintiffs that the complaint herein be dismissed with its costs of this action.

ELLWOOD P. MOREY AND
WM. HENRY WHITE,
Attorneys for Defendant Globe Indemnity Company.
HAGOOD, RIVERS & YOUNG,
Of Counsell.

(Duly verified.)

Order of Judgment.

Filed June 18, 1921.

This case coming on to be heard before this Court and a jury, and having been heard upon the testimony submitted for the parties respectively, and the jury having found under the instructions of the Court:

First. That the contract between R. H. Arnold and the United States dated 3rd October, 1917, and referred to in the complaint, has been completely performed, and final settlement thereof made 16th day of April, 1920.

Second. That the firm of W. B. Guimarin & Company is entitled to recover under its contract with R. H. Arnold Company, dated 4th October, 1917, the sum of seven thousand six hundred ninety-three and 31/100 dollars ($7,693.31), with interest from the 19th December, 1918, amounting in all to nine thousand thirty-five and 59/100 dollars ($9,035.59).

13 Now, therefore, it is ordered, pursuant to Rules 50 and 51 of this Court, that judgment be entered herein in favor of the United States against the defendant, R. H. Arnold Company and Globe Indemnity Company, for the sum of sixty-five thousand one hundred ninety dollars ($65,190.00), the penalty of the bond referred to in the pleadings herein, and that it be, and hereby is, referred to Arthur M. Huger, Esqr., as master, to take proof of the claims of the creditors of R. H. Arnold Company, who have intervened in these proceedings, and that he report to this Court upon each of said claims severally together with the testimony offered for and against the same and his conclusions of law and fact thereon.

HARRY A. M. SMITH,
U. S. Judge, E. D. S. C.

18 June, 1921.

Judgment.

Filed July 7, 1921.

UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the District Court.

THE UNITED STATES to the Use of W. B. GUIMARIN and E. R. HEYWARD, Co-partners, Trading under the Name of W. B. Guimarin & Company, Plaintiffs,

against

R. H. ARNOLD, Trading as R. H. Arnold & Company, and GLOBE INDEMNITY COMPANY, Defendants.

This action having been brought to a trial at a District Court held on the 16th day of June, A. D. 1921, and a verdict for the plaintiff having been rendered therein by the jury and judgment for plaintiff having been ordered by the Court for the sum of sixty-five thousand one hundred and ninety ($65,190.00) dollars, and the costs having been adjudged at fifty-four and 11/100 ($54.11) dollars;

Now, on motion of Tompkins, Barnett & McDonald, attorneys for said plaintiff:

It is adjudged, That the United States of America recover of said R. H. Arnold Company and Globe Indemnity Company,
14 sixty-five thousand one hundred ninety ($65,190.00) dollars, so found, with fifty-four and 11/100 ($54.11) dollars costs.

[SEAL.] RICHARD W. HUTSON,
C. D. C. U. S., E. D. S. C.

July 7, 1921.

TOMPKINS, BARNETT & McDONALD,
RUTLEDGE, HYDE & MANN,
Plaintiff's Attorneys.

Bill of Exceptions.

Filed August 31, 1921.

Be it remembered, that on the 16th day of June, in the year of our Lord one thousand nine hundred and twenty-one, at a regular term of the said Court begun and holden at Charleston, in and for the Eastern District of South Carolina, before his Honor Henry A. M. Smith, District Judge, the issues joined in the above stated case between the parties thereto came on to be tried before the said Judge and Jury, all parties appearing by counsel, and the following proceedings were had:

Upon the call of this cause defendants urged that as the pleadings herein raised the question of jurisdiction the Court should decide its jurisdiction before entering upon the trial of the case on its merits. It was also urged that in the event the Court declined to decide this question, it submit to the jury the single issue of jurisdiction. This contention was overruled, the Court holding that it would be better to take all the testimony and then all questions depending on conclusions of fact could be determined. That this course was more fitted for the orderly, celeritous and complete adjudication of all questions.

Exception thereto was taken and allowed.

Thereupon, attorneys for defendants, in open court, stated that it was their view of the law that the claims of all intervenors should be
15 adjudicated in the trial of the main cause before the same jury and that if the intervenors did not present their claims at this time they would oppose any other trial on the ground that by their failure to do so they would be thereby foreclosed. The Court held that under the rule of this Court and the state of the pleadings the proper course was to try the principal cause first and then if a breach of the bond was established judgment could be rendered and other claimants permitted to assert their several claims, if any they had, to share in the fund thus created.

The jury was duly impanelled and sworn and thereupon the following proceedings were had:

Thereupon the plaintiff offered the following oral testimony:

Testimony.

E. R. HEYWARD.

Direct:

Mr. McDonald: Mr. Heyward, do you live in Columbia, S. C.?
A. Yes, sir.
Q. What is your relationship with the firm of W. B. Guimarin & Company?
A. I am a partner.
Q. Where is the principal place of business of that concern?
A. 1220 Washington Street, Columbia.
Q. Did you have occasion—did your firm have occasion to do any work on Government buildings at the Navy Yard, under contract with Mr. R. H. Arnold?
A. Yes, sir.
Q. What is the nature of the work you did?

Mr. White: The contract speaks for itself. We object.
Court: The contract is admitted.
Mr. White: By the defendant Arnold; but their contract is not admitted by the Globe Indemnity Co.
Court: I thought you said the answer was the same.
Mr. McDonald: We are prepared to prove it.
Court: Go on and prove your contract.

Mr. McDonald (to witness): Mr. Heyward, will you — at that and state what that is?
16 Witness: That is a contract—sub-contract between——

Mr. White: We object.

Court: The usual rule about a contract is, where you have a witness you have got to prove it by the witness. Where is L. R. Cooper? Is he without the jurisdiction?
Witness: Yes, sir; out in the Middle West.
Mr. McDonald: Mr. Heyward, do you know the handwriting of L. R. Cooper? Is that it?
A. Yes, sir.

Exhibit #1, sub-contract between R. H. Arnold & Company and W. B. Guimarin & Company, dated Oct. 4, 1917. Admitted in evidence for the reasons, first, that it is admitted by Arnold, the other contracting party, and that is sufficient to admit it; and next, the witness L. R. Cooper being proved to be without the jurisdiction, his handwriting goes to prove the contract.
Exception on behalf of Globe Indemnity Co.

Court: You need not read it to the jury.
Mr. White: I ask for another ground of exception: that neither Mr. Arnold's signature nor the witness is proven. The witness merely proved, as I understand, the witness' own signature.

Court: Arnold has admitted his signature.

Mr. White: That is true, as far as Arnold is concerned. Only the signature of one of the parties has been proven.

Court: Is the Globe Company on it?

Mr. White: Not on the contract.

Court: The Globe is not a party to that contract.

Yes, sir, I admit it.

Mr. McDonald: Mr. Heyward, I think I asked you before, who compose the firm of W. B. Guimarin & Company?

A. W. B. Guimarin and myself.

17 Q. Is that a corporation?

A. No, sir; it is a partnership.

Court: You didn't see that contract signed by Arnold?

A. No, sir.

Mr. McDonald: Are you familiar with Mr. Arnold's signature?

A. I think so. I have seen it several times.

Q. State whether or not you correspond with Mr. Arnold and have letters from him in your possession?

A. Yes, sir; I have a great many letters from the office there.

Q. Would you mind looking at this signature and stating whether or not that is Mr. Arnold's signature to that contract?

Objection. Overruled.

Exception.

A. To the best of my knowledge and belief, it is. I did not see him sign it, but I have seen the same signature a number of times.

Q. Mr. Heyward, in accordance with that contract, what did Guimarin & Co. proceed to do?

A. Proceeded to assemble their materials to ship them down to Charleston for construction work.

Q. What sort of work were you to perform?

A. Heating work, plumbing, draining, etc., and that sort of mechanical work in the building.

Q. Did W. B. Guimarin & Co. complete their sub-contract?

Objection. Overruled.

Q. What was furnished under that subcontract?

A. Everything called for under the subcontract.

Mr. White: I move to have the answer stricken out, as not responsive.

Court: What is the use? You are just wasting time.

18 Mr. McDonald: Was the work accepted by the Government—by Mr. Arnold?

Objection: "The only way the Government could accept would be in writing."

Mr. McDonald: We are prepared to prove that by many witnesses.

Court: Well, go on and prove it. He says in his complaint he

furnished labor, material, tools and appliances. He must have some statement in detail to show what he did.

Mr. McDonald: Have you your books in Court?

A. Yes, sir.

Q. Kindly refer to them and state what work you did under that contract, and the total amount?

Court: Unless you have some letters or admissions, statements admitted, from Arnold.

Mr. McDonald: I think we have that.

Court: Well, that will shorten the matter.

(Witness produces books.)

Mr. McDonald: Mr. Heyward, will you kindly refer to your books. and start at the beginning of the work, and tell the Court and jury what work was done there?

Court: Of his own knowledge. (To witness:) Did you keep the books?

A. No, sir, I didn't keep the books. I am office manager of the firm. I had a regular bookkeeper. Mr. Cooper was the bookkeeper at the time. Mr. Guimarin was the outside man, who handled the construction work. He knows about the progress of the work. I wasn't actually on the job myself.

Court: Is Mr. Guimarin here?

A. Yes, sir. He can testify as to that.

Court: You must have somebody to testify as to the actual work done and materials furnished?

A. The only way I could testify is as to the personal conversation I had with the public works officer in charge of the work, as to whether or not the work was completed. I can't testify as to

19 actually seeing the work in operation.

Mr. McDonald: Can he prove by his books what Guimarian & Co. claim is the balance due under the contract, and that statements were mailed to Arnold and that they did not deny?

Court: Yes, sir, he can prove that.

Mr. McDonald: Mr. Heyward, will you look at that statement and state whether or not a copy of that was mailed to Arnold, as showing a balance due under the account?

Objection on the ground that it purports to be a copy. Overruled. Exception.

Mr. McDonald: Did you mail that statement to Mr. Arnold?

A. Yes, sir, to his office.

Court: You yourself mailed it?

A. No, sir.

Court: How did you know it was mailed?

A. I didn't mail it myself. It was sent out in the regular course of business. I prepared it, signed it personally.

Objection.

Court: And put it in the proper box, or whatever you did?

A. I didn't. I presume my bookkeeper or stenographer did. I individually didn't mail it.

Mr. McDonald: State whether or not you received a reply to the letter in which you enclosed that statement?

A. Yes, sir, I did.

Court: You must produce the letter.

Mr. McDonald: What is the date of that?

A. December 19.

Q. Will you look at that letter and state whether or not you received that letter in reply to the statement which you mailed?

A. Yes, sir, I did.

Court: You received that in due course of mail, or by mail?

A. Yes, sir.

20 Exhibit #2, carbon copy statement from Guimarin to Arnold, dated Dec. 19, 1918.

Exhibit #3, letter, Arnold to Guimarin, dated Dec. 21, 1918.

Exception to Exhibits #2 and #3.

Mr. McDonald: Did you receive any further communication from Mr. Arnold with reference to that, Mr. Heyward?

A. Referring to that account? Yes, sir.

Q. State whether or not he ever denied——

Court: Produce your letters. He can't state what was in the letters. Where are your letters?

Objection to these letters following as irrelevant and immaterial, and none of those from Arnold & Co. signed by Mr. Arnold personally.

Mr. McDonald: Did you receive those letters in due course of mail?

A. Yes, sir.

Q. Look at these two letters; see if you received those in due course of mail?

A. Yes, sir.

Q. Look at those three letters, and see if you received those in due course of mail?

Court: Well, they have admitted them.

Exhibit #4, carbon copy letter, Jan. 1918, Guimarin to Arnold.

Exhibit #5, letter Jan. 16, 1919, Arnold to Guimarin.

Exhibit #6, carbon copy letter April 17, 1919, Guimarin to Arnold.

Exhibit #7, letter April 23, 1919, Arnold to Guimarin.

Exhibit #8, carbon copy letter April 26, 1919, Guimarin to Arnold.

21 Exhibit #9, letter May 16, 1919, Arnold to Guimarin.

Objection on the ground that no authority has been shown from Mr. Arnold. Overruled.

Exception.

(Letters read to the jury.)

Mr. McDonald: Mr. Heyward, state whether or not any changes, extras, were made or added to the subcontract?

A. Yes, sir, there were.

Court: You admit this carbon copy of the letter of the 7th as much as if the original was produced?

Mr. White: Yes, sir. The same objection, of course, to its relevancy, and ask the same exception. We admit that the letter of March 30, 1918, was written, a copy of which is offered by counsel for the plaintiff, but we do not admit the authority of the gentleman who purports to sign it.

Exhibit #10, carbon copy of letter Feb. 7, 1918, and addition to contract; Guimarin to Arnold.

Exhibit #11, typed copy letter March 30, 1918, Arnold to Guimarin, signed by Rosenheim.

Objection on the ground that there was no authority to bind Mr Arnold, and calls the Court's attention to the contract already in evidence, which would give to the plaintiff a price based upon his contract with Mr. Arnold; whereas Par. 17 of the Regulations is the one giving to Mr. Arnold by the United States a price on an entirely different basis. Overruled.

Exception.

(Letters read to the jury by Mr. McDonald, with statement.)

Court: You say you constantly correspond with them?

A. Yes, sir.

Court: Were your letters that you got, any other letters, signed by this same manager?

22 A. Rosenheim? Yes, sir.

Court: Was that the course of correspondence between you and Arnold, as appears in those letters?

A. Yes, sir.

Mr. White: We object to that evidence, because the other letters may be like the one there: merely an acknowledgment of the receipt of the letter.

Court: It is a question of fact. They might or might not be—whether this person was the authorized persons to sign the letters. I will make him put the letter in signed by Rosenheim. If that was the general correspondence, then it is for the jury to say whether that is not the proper inference, that Rosenheim was authorized to sign.

Mr. White: I want to ask a question: Is this the last of the statements? Because if it —, I don't intend to object to it.

Court: You mean there is another addition?

Mr. White: I can't say that positively. I simply want to ask the witness. (To witness:) Was there another later, later than that, made up by your firm?

Witness: Than what?

Mr. White: The one the Court has?

Witness: I haven't seen it yet. I have no recollection of any. That is the only one, as far as I know.

Mr. White: Then we will have to ask them to prove that, if the witness does not know, and we don't know; I don't know how I can bind my client. We will not admit anything in reply to this particular one.

Court: You deny that you have got the original?

Mr. White: No, sir, we just don't produce it. The reason of that is that I don't know what the facts are. I can't find out from the witness, or from my record.

Court: Counsel says he declines to produce and you can offer secondary evidence.

Mr. White: Our information is that the original is not here at all. I just don't know. It is in the hands of the Public Works officer, the original of that estimate referred to.

Mr. McDonald (to witness): State whether or not you wrote and mailed the original of that letter and statement?

23 A. I made up the statement and wrote the letter and signed it. I personally did not mail it.

Court: You put it in the proper receptacle in due course?

A. Yes, sir; in the mail-box in my office, to be sent out.

Exhibit #12, carbon copy letter May 11, 1918, Guimarin to Arnold, with carbon copy estimate of additions.

Exception.

Q. Look at that letter and state whether or not you received that in due course of mail?

A. Yes, sir, I did.

Court: Do you know the handwriting at the bottom at all?

A. Yes, sir, I think so. I have had a good many letters from Mr. Homann. He is connected with the R. H. Arnold Company.

Mr. McDonald: What was his connection with them?

A. I couldn't tell you that. He was in Charleston here for quite a while, on construction work, I presume.

Objection.

Court: He was connected with the work here?

A. Yes, sir.

Court: You had correspondence with him as such?

A. I had correspondence with him.

Exhibit #13, letter of 25th May, 1918, Arnold to Guimarin, signed by Ralph E. Homann.

Objection on the ground that there is no authority shown in Mr. Homann. Overruled.

Exception.

(Letters read to jury by Mr. McDonald.)

Mr. McDonald: Mr. Heyward, did you receive those letters in due course of mail?

24 Court: I only let them in to show that in the course of correspondence he received letters signed by Rosenheim.

Mr. White: I want to ask a question, as to the letter of May 18, as to whether or not he did re-check and make a new estimate, as requested in the letter of May 18?

Witness: I have no recollection of it at all. I will have to see the letter (Inspects the letter.) No, sir, I have no recollection of having advised that.

Objection as irrelevant and immaterial; no evidence to bind the defendant, by anything which Mr. Rosenheim may have done, because there is no authority shown in him, and it does not purport to be a complete history of the transaction.

Court: It is admitted at this time, to show that it was from R. H. Arnold, signed by Rosenheim, duly authorized.

Exception.

Exhibit #14, seven letters, Arnold to Guimarin, signed by A. F. Rosenheim, dated March 23, March 26, May 8, May 18, May 20, May 15, May 31, all 1918.

Mr. McDonald: Mr. Heyward, did you receive those letters in due course of mail? (Showing him letters.)

A. Yes, sir; from Arnold, signed by Homann.

Q. Do you know of your own knowledge what relation Mr. Homann bore to R. H. Arnold?

A. No, sir. His name is on the letterhead. I presume he is a partner in the firm. I don't know.

Court: That is his handwriting?

A. Yes, sir.

Court: That is his handwritng?

A Yes, sir.

Court: And the letters arrived to you in due course of mail?

A. Yes, sir.

Exhibit #15, nine letters, Arnold to Guimarin, signed by Ralph E. Homann, dated June 20, May 20, June 24, July 6, Aug.

25 23, Sept. 3, Sept. 24, Oct. 14, Nov. 30, all 1918.

Mr. White: We admit his doing of the $26 worth of work mentioned in the letter of June 26, 1918. We admit the item, but not Mr. Homann's authority.

Exhibit #16, letter June 26, 1918, Arnold to Guimarin, signed by Ralph E. Homann.

Exception to the admission of Exh. #16 for any other purpose except for the $26 worth of work.

Mr. McDonald: Mr. Heyward, will you refer to your books and state what credit the books show?

Court: The credit is admitted in his answer. It is admitted that the sum of $5,962.61 was paid by Arnold & Co. to W. B. Guimarin & Co. on account of the work done under this contract.

Mr. McDonald: Will you refer to your books, Mr. Heyward, and state what they show is the balance due under the contract over the admitted credit?

Court: You sent a statement, didn't you?

Mr. McDonald: Yes, sir .

Court: You can't prove work done in that way merely by asking him for a balance. You must prove the work by another witness, if you wish; but he can't prove that work was done, upon a claim of this kind, simply by saying what is the balance.

W. B. GUIMARIN.

Mr. McDonald: At this stage I wish to introduce the certified copy of the contract, bond and specifications furnished by the Government.

Exhibit #17, certified copy original contract #2469, dated Oct. 3, 1917, bond, etc.

Mr. McDonald: Mr. Guimarin, where is your home?

A. Columbia.

26 Q. What is your relation to the firm of W. B. Guimarin & Co.?

A. W. B. Guimarin, of W. B. Guimarin & Co. I am senior partner of that firm.

Q. In regard to the work done at the Navy Yard under the Arnold contract, what was your relation with regard to that work?

A. Superintendent of the work, of the mechanical part.

Q. The actual doing of the work?

A. Yes, sir.

Q. Do you recollect that a representative of Mr. Arnold was on that job?

A. Yes, sir.

Q. Who was that?

A. Mr. Homann.

Q. Mr. Ralph E. Homann?

A. I think that is it, Ralph E. Homann.

Q. Mr. Guimarin, I believe under your subcontract you were to do all of the plumbing work?

A. Yes, sir.

Q. Mr. Guimarin, do you know of your own knowledge that all of the work called for by this subcontract was performed by your firm?

Objection, as that is a conclusion of the witness, according to his interpretation of the contract.

Another objection: There is nothing here due except instalment payments; nothing owing under this contract, until after completion or acceptance—as the work progresses, and then ten per cent, not only after completion but acceptance. Now, to ask the witness

whether he completed the work is merely to ask him for his own opinion upon his own work, upon his own interpretation of these specifications. Overruled.

Exception.

Court (to Mr. White): As at present advised, I think I will charge the jury that your non-objection to the accounts binds you. He sent you a complete statement of the accounts one year and eleven months before action was brought. Under the general rule, that is an acceptance, unless you objected to in some way. The rule is two years, but not limited—it depends somewhat on circumstances. I think the twenty-three months, and he had to bring a suit would be sufficient admission.

Mr. McDonald: Mr. Guimarin, did your company com-
27 plete all of the work under the specifications that you have seen, under the head of plumbing?

Court: (Takes specifications.) Mr. Guimarin, did you actually have charge of the work?

A. Yes, sir.

Court: You attended to it yourself?

A. Yes, sir.

Court: And saw it all done?

A. Yes, sir, practically. Yes, sir, you might say so.

Mr McDonald: Mr. Guimarin, have you read the specifications under the head of plumbing and heating?

A. Yes, sir.

Q. Have you done all of the work?

A. Yes, sir.

Exception of defendant's counsel will stand through all of this.

Q. What about roof drains and fire service?

A. Roof drains and fire service—I don't know; that may go under the head of general drainage. The words "general drainage" there—I suppose it must be——

Q. State whether or not you did do the work?

A. I did do that; yes, sir.

Court: What does "fire service" go under?

A. That came under water service there.

Court: Under the head of plumbing?

A. Yes, sir.

Court: Fire service did?

A. Yes, sir.

Mr McDonald: You completed both the plumbing and the drainage?

A. Yes, sir.

Q. In accordance with the contract?

A. Yes, sir.

Q. With regard to the changes that were authorized, we have already proved those, three changes in evidence there. I will have to refer to them in order to intelligently question about them. Will

you look at the change in radiators, there, and state whether or not you completed that work?

Court: What is the date of that? What exhibit are you handing to him?

Mr. McDonald: #10, your Honor. The work specified in Exhibit #10. (To witness:) State whether or not you com-
28 pleted the work specified uncer Exhibit #10?

A. Yes, sir.

Same objection. Overruled.
Exception.

Q. Was that estimate a fair value of the work done?

Objection: The contract says a fair value and basis.

Q. What was the basis you took for the extra work?

A. Well, I hardly know how to answer that—as a basis——

Q. State whether or not you furnished estimates to Arnold & Co. covering that extra work?

A. Yes, sir, I did.

Q. And state whether or not those estimates were the basis upon which you did it?

A. Yes, sir, that is it.

Q. Referring to Exhibit #12, if your Honor pleases, Change D, will you look at this entitled "Additional Plumbing, Government Storehouse," and state whether or not the work covered by that statement was done by you.

Same objection. Overruled.
Exception.

A. Yes, sir.

Q. Is that a fair value for that work, Mr. Guimarin?

A. Yes, sir.

Same objection. Overruled.
Exception.

Q. Do you know, Mr. Guimarin, what time the Government moved into that building out there?—actually occupied the building?

Objection: Immaterial. Overruled.
Exception.

A. I don't recollect that. That is, the day of the week. I know it was in the fall of the year, about cold weather.

Q. 1918?

A. Yes, sir.

29 Q. Did you at any time have occasion to call at Mr. Arnold's office in Washington during the negotiations?

A. Yes, sir.

Q. State whether or not you met a Mr. Rosenheim up there?

A. Yes, sir. That is, I think that was his name.

Q. And what was his position, as far as you could judge, in the office?
A. I thought he was the bookkeeper.

Objection to what he thought.

Q. What did you see Mr. Rosenheim doing?
A. He was sitting in there, working at the desk.

Cross-examination:

Mr. White: In making up these estimates, did you fix the values as of the time?
A. Oh, yes, sir.

Comdr. G. S. BURRELL.

Direct:

Mr. McDonald: What is your official position?
A. I am the Public Works Officer of the Navy Yard Station, Charleston, S. C., and of the Sixth Naval District.
Q. How long have you been in the service?
A. Fourteen years next month.
Q. Will you explain to the Court and jury the method of settlement of public contracts as carried on by your department?

Objection. Overruled.
Exception.

A. After the work is physically completed, the Public Works Officer, who is the officer in charge of the contract, makes a written report to the Bureau of Yards & Docks that the work is completed; sets forth the facts and circumstances attending the completion, in reference to unavoidable delays, as far as he can determine, and asks the Bureau's instruction for the preparation of final vouchers and final releases. The Bureau considers that statement in connection with any claims that may have been submitted by the contractor for extra compensation or for extension of time by reason of unavoidable delays. Thereupon, the Bureau of Yards & Docks issues instructions for the preparation of final vouchers and final releases, and instructions as to how much liquidated damages, if any, are to be subtracted for delay in completion. The Public Works Officer prepares the final voucher and final release in accordance with those instructions; sends that to the contractor, notifying him of the Bureau's instructions. It is then up to the contractor to sign the final voucher and release and return them to the Public Works Officer. Such voucher is then signed by the Public Works Officer, if signed by the contractor; forwarded to the Bureau, along with the original of the final release. It receives the Bureau's approval and signature, is returned to the station and check in payment prepared and mailed by the Disbursing Officer at the Station.

Court: The final step is the check in payment?
A. Yes, sir.

Mr. White: Isn't all this in writing, as the basis of my former objection?

Court: You can do that on cross examination.

Mr. McDonald: Will you refer to your records and state when, if at all, the Bureau of Yards & Docks authorized the basis of settlement of this contract with Mr. R. H. Arnold?

Mr. White: The record will speak for itself. It is the best evidence, and I object to the witness saying.

Overruled.

Mr. White: Is this the Public Works Officer who was here at the time?

Court: Were you here?

Witness: No, sir, I was not here at the time.

Court: Are you the official custodian of the records?

A. Yes, sir.

Court: You have got the official entries of the man who was the Public Works Officer at the time? All right, sir, you can
31 speak from the records, or rather produce the records of the person who was there.

Mr. McDonald: Will you produce the records showing the authorization of the basis?

Court: I will let that in evidence.

Objection on the ground that it does not show the final settlement. If it is offered as a letter written to the Assistant to the Bureau of Yards & Docks at the Navy Yard at Charleston, why, there is no objection to it if that is what it shows. Overruled.

Exception.

Court: That is the official record?

Witness: Yes, sir. The original of the instructions from the Bureau to the Public Works Officer. I have a photo-print of the same, which can be compared with the original.

Court: I will take your word for it. That is the exact photo-print?

A. Yes, sir.

Exhibit #18, photo-print of letter from Bureau of Yards & Docks to Navy Yard, Charleston, stamped with date April 16, 1920.

Court: That is the official entry of the contract?

A. That is the official entry, yes, sir.

Mr. McDonald: Are you acquainted with the gentleman that signed the letter?

A. Yes, sir.

(Other side admits signature.)

Q. State whether or not a statement was sent to Arnold & Co. embodying the basis as outlined in the letter of May 16?

Objection.

Court: Unless the record shows a letter——
Witness: I have been on duty at this station since Jan. 5, 1920. I have first-hand knowledge of the correspondence since that
32 date. This letter was received after I came to this station, so the final settlement was placed in my hands.
Court: That memorandum?
A. This was received April 19, 1920. I have been Public Works Officer since January 5, 1920.
Court: You were the Public Works Officer at the time?
A. At the time the paper was received, yes, sir.
Court: Not at the time the work was done?
A. Not at the time the work was physically in progress.
Court: But at the time that the final auditing and authorization of payment was made?
A. Yes, sir.
Court: And you know that of your own knowledge?
A. Yes, sir.
Mr. McDonald: Did you communicate that to Mr. Arnold?

Objection: If he has it in writing, that is the best evidence.
Court: If it is in writing—you have a copy of the letter?

Witness: Yes, sir. (Produces copy.)
Mr. McDonald: We asked them to produce the original.
Court: You called for the letter transmitting the final voucher of April 17?
Mr. White: This is not the letter transmitting the final voucher. (Difference of dates.)
Court: I will let it in, if this gentlemen swears he mailed it.

Exception.

Court: Have you a copy of that?
Witness: It is in the same folder.
Court: That letter dated April 20——
Mr. White: It is a carbon copy offered, and we show to the Court that no notice to produce the original was given us.
33 Court: I don't think that is necesary, to prove the fact.
Mr. McDonald: We have a registered receipt for that.
Witness: That was also sent by registered mail.

Court: This is the registration receipt annexed?
A. Yes, sir.
Court: This letter dated April 20, transmitting the memorandum you have already put in evidence, signed by yourself, was mailed? This is the registry receipt?
A. That is the post office registry receipt.
Court: Sent by registered mail?
A. That is correct.
Court: I will admit it in evidence if you have a photostat record.
A. I am sorry, I have not a photostat record.
Court: You will make a copy and let me have it?

Witness assents.

Mr. McDonald: State what reply, if any, you received to that communication.

Court: He would have to produce the reply.

Witness: No reply was received to this letter. I then followed the matter up with the Postoffice Department, and found delivery——

Objected to as hearsay.

Witness: I have it in writing.

Mr. McDonald: Was it possible—State whether or not it was possible for the Government to have actually paid the claim under the regulations until Mr. Arnold had released the final vouchers, or indicated his acceptance of that basis of settlement?

Objection to the conclusion of the witness.

Court: He has already testified that the method was not to pay until they got the release from the contractor. I understood you to testify to that?

34 Witness: I have testified that. It is contained in the contract itself—certified copy laid before the Court.

Mr. McDonald: Will you refer to your records, please sir, and tell us—I believe that letter itself states the date of the acceptance of the building by the Government, doesn't it, Commander?

A. The original letter, of which you have a photostat copy, says the building——

Mr. White: We don't think the witness ought to say what is in the letters. We don't think these questions ought to be asked. We have the letters!

Court: Well, I have admitted the letter!

Mr. McDonald: I want to ask the date of the acceptance of the building—if he knows it of his own knowledge.

Court: It is perfectly immaterial.

Mr. McDonald: Do you know when the Government accepted the building?

A. I wasn't here at the time the building was physically completed.

Court: They were in possession at the time of that final audit were they?

A. Yes, sir. It had been in use for over a year at that time.

Mr. McDonald: Will you refer to your records, Commander, and state what they show with reference to change C. of the contract, with particular reference to the plumbing work included within that change?

A. This is the station copy of the contract, by which the officer in charge is governed. This is the body of the contract. These are the change orders as issued from time to time.

Mr. McDonald: The purpose of this line of inquiry is to show the amount which the Government allowed Arnold on these particular changes, with a view to showing that our estimates were reasonable and fair valuations.

Court: Well, I will admit them on that.

Mr. McDonald: What amount was allowed by the Govern-
35 ernment for Change C, with particular reference to the plumbing?

Objection: The record is the best evidence.

Court: Read what the record says!

Objection. Overruled.
Exception.

Mr. White: Another ground of objection is that the basis of payment to plaintiff, if any, that the plaintiff is entitled to, is the basis fixed in his contract with Mr. Arnold, and is not the basis of Mr. Arnold's compensation from the Government.

Overruled.

Court (dictates): The official record is produced by the witness, who is the official custodian of the record made at the time. That record has been subjected to the inspection of counsel on the other side. The Court does not desire to retain these official records away from the official custodian, and therefore the witness will be instructed to read to the stenographer to take down, so much of the official record as is admitted.

Mr. McDonald: Read what portions of it show the change, with reference to the plumbing items of $290.

Witness (reads): "Change Order C., dated May 6, 1918, covers four items, A, B, C, and D. Item A: Install additional radiators in the office space provided by Change B. dated March 1, 1918, together with the necessary pipe fittings and pipe coverings. Item B: Install twelve additional office lights, and two additional wall receptacles—That does not affect the plumbing.

Mr. McDonald: What change, now, does that cover?

A. "Install additional radiators in the office space, provided by Change B., etc."

Q. Will you state what credits your records indicate were allowed to the contractor, Mr. Arnold, for that particular change?

36 If the witness proposes to read that, it is covered by the previous objection.

A. (Reads:) "On account of this change, the contract is increased for Item A by the sum of $290.95."

Mr. McDonald: State whether or not that amount was actually credited by the Government to Mr. Arnold's account, $290.95.

Objection: There is a record of it; there is a voucher.

Court (to Mr. White): Well, sir, produce the voucher.

Witness: I have a memorandum copy of all the vouchers. (Indicates to Court credits and debits, etc.)

Mr. White: (Produces voucher.)

Court (to witness): You have the final voucher?

Witness: I have the retained copy of the final voucher.

Court: In regard to Arnold & Co., under this contract?

A. Yes, sir.

Court: That is this voucher dated April 17, 1920—Oct. 3, that is the date of the contract?

A. That is correct.

Mr. White: This voucher you will see was sent to us by letter of Sept. 20, 1920. That is the date which they have marked on this voucher as the time of completion of the work; at least, it so says. The time of delivery, not of the voucher, but of the work! We are called upon to produce this so-called final voucher with the letter, and we are ready to do it.

Court: If you will produce it, I will put it in evidence right now.

Mr. White: I thought Commander Burrell was to make additional copies.

Witness: I will furnish additional copies of the final voucher showing exactly all credits allowed.

37 Mr. McDonald: State whether or not that final voucher, so-called, was prepared in accordance with the instructions contained in the letter of April 16, 1920, from the Bureau of Yards & Docks.

Objection, as to the conclusions of the witness, and furthermore it appears on its face, and the dates of other letters under which it was prepared.

Court: I will just take a copy of the voucher, and let it speak for itself.

Mr. White: We agreed that there was forwarded to us a letter of Sept. 20, by Mr. Burrell, the witness, and think that was this paper marked "Official Voucher."

Court: Was any other voucher forwarded to him before that?

Witness: Not for the purposes of a final voucher—the monthly vouchers had been.

Mr. White: We regard that as the date of final settlement.

Court: It is for Court to say whether it regards it as such or not. (To witness): At any rate, you will send a copy of that final voucher?

Witness: I will be pleased to comply.

Mr. McDonald: Would the final voucher show item allowed to Mr. Arnold for those changes, of $290.95 and $3,700 and some odd dollars?

A. The final voucher contains details of a single change order in one item, and the final voucher does not make separation of items in the same change order. But this change order itself details that.

Q. Will you take Change D—I believe you have already testified on C, Arnold was allowed $290.95?

A. I have testified that for Item A.

Q. Change D.—What amount was allowed Arnold as a credit for the plumbing work done under Change D?

A. (Shows it to Court.) That is the official copy.

38 Court: It doesn't state how much is allowed?

A. Down here in this fine print.

Court: That is for the whole thing?

A. Yes, sir.

Court: $4,903.70.

Mr. McDonald: Which records indicate what the work done by Guimarin amounts to?

Witness: I will have to refer to the proceedings of the Board.

Court: You can pick out what was allowed for the work done by Guimarin to Mr. Arnold under Change D of the contract.

A. Yes, sir. I have it right here. The plumbing part done by Guimarin & Co. This is the retained copy of the report of the Board of Officers who were to determine the increase in compensation on account of certain additional work in the manner specified in the contract for determination. $3,721.85.

Objection, on the grounds previously stated, that the amount allowed Arnold is immaterial and irrelevant.

Overruled.

Exception.

Mr. McDonald: Will you refer to change E of the contract?

Mr. White: I think we ought to have a copy of the letter introduced here, rather than have the witness testify to its contents, and I will object to that if it is done. A copy will be the evidence, rather than what the witness states.

Court: If he will send a cop*t*——

Witness: I will be pleased to comply.

Mr. McDonald: Referring to Change E, tell the Court what credit, if any, was allowed to Arnold for work done by Guimarin & Co. on that change.

Objection to the question in that form. It is immaterial.

Overruled.

Exception.

39 A. I think you are confusing Items and Changes. I think you mean Item E.

Q. Change F, of Nove-ber 4, is the one?

A. (Shaws it to Court.) This is Change F.

Court: I will ask you to let us have a copy of it

Same objection. Overruled.

Exception.

Mr. McDonald: Change F—only an item of $61 05, and they admit $26.

Mr. White: It seems to be swallowed up in the $328 of the work allowed Mr. Arnold. I made my objection.

Mr. McDonald: A change was allowed. Maybe the subcontractor might do some part, etc. I am attempting to show what Mr. Guimarin did of the $61.05.

Witness: Change order F. amounts to $328.35, as covered in the change order. As a matter of record, I have here a copy of the Board's report which covered that work, to determine the cost of the different items. Sub-item A additional plumbing, the sum of $28.60. Item B. means heating, pipes leading to office on fourth floor to avoid interference with sprinkling system, $32.45. This is a total of $61.05.

Mr. White: This second reading of this second thing—no date is given. I object and ask for an Exception.

Witness: The date of the report is Oct. 25, 1918.
Court: Do you want copies of this also, Mr. White?
Mr. White: Yes, sir. I will ask the Commander to do so.
Witness: I will be pleased to comply.

Mr. McDonald excepts to Court's refusal to be guided by decision in case of Illinois Surety Co. v. Peeler.

Cross-examination:

May I ask counsel if we are to regard this letter of Sept. 20, 1920, and final voucher, as in evidence, offered by the plaintiff?

40 Court: Yes, sir, whatever copy he furnished, I allowed to go in.

Mr. McDonald: Voucher is dated April 17.

Witness: I don't recall being asked for any copy of the Sept. 20, 1920, letter.

(He is instructed to furnish such copy.)

Mr. White: Commander, do you recall the physical making-up of this paper marked Final Voucher, and sent to Mr. Arnold, Sept. 20, 1920? I want to know whether it was prepared just about that time, so far as you recollect.

Witness: The first three or four pages of that voucher were typed in April, immediately after receipt of the Bureau's authority. The last page was typewritten in September, after the receipt of the letters which are cited on the last page of the voucher.

Q. Turn to your record on Change D; the one that fixes the figures of $3,700—Iwant to see that a moment please?

A This is Change D, (Gives it to Mr. White) for the gross amount of the change order.

Q. Now, will you turn to the plumbing part of that? What I want to get at, is if you have the Board's figures making up the $4,900 and odd dollars. Under the contract between the United States and Mr. Arnold, if a change is ordered, and the Public Works

Officer finds it is more than five hundred dollars, then it is fixed by a board of officers ap-ointed by the Commandant. I wanted to get at the figures which the Board used to make up the total of that charge of $4,900, of which the petitioner here claims $3,300—Guimarin

A. Item A.

Q. Just let me look at that.

Court: Commander Burrell, you say that the first four pages were typed in April, before the time of that audit?

A. Yes, sir. After receiving that paper, of which you have photostat copies.

Court: Was there any revision after that?

A. There was no revision of the basis of settlement. In my letter of April 20, of which I showed you a copy, I called upon the contractor to make good certain sums of money that he was owing for utilities that had been furnished,——

41 Objection: That is in writing.

Overruled.

Exception.

I reported facts and circumstances——

Q. You are speaking from your own knowledge?

A. Yes, sir, from my own knowledge, and letters which I myself prepared. I reported the circumstances again to the Bureau, and recommended that I be authorized to make deductions on the final voucher, which would protect the Government for those sums of money owing. That was approved by the Bureau, and the Bureau's letter approving that is cited on that last page of the voucher. That is the only change that was made.

Q. Those letters were cited on the last page of that voucher, sent in September, 1920?

A. Yes, sir.

Q. And copies of which Arnold had?

A. He didn't have copies of this Bureau's letters; but I have written to him repeatedly, reminding him of the indebtedness.

Q. What I meant is, was there any—The only revision, then, from the basis—It is no revision of the basis of settlement?

A. None whatever, sir.

Q. The only difference between—The only difference, the only thing, was that there was a deduction for utilities not accounted for by him. Is that it?

A. Certain utilities in the way of water and drain service and locomotive, and demurage on railroad cars—deductions were made to cover in the amount to be allowed; but the contract itself was not changed.

Mr. McDonald: What was the amount of that deduction?

A. I think I remember it, but I prefer to read it. (Reads from voucher.) "Less over-expenditure on contractor's special deposit (authorized by Bu. Yd. & D. let. 2469, Sept. 7, 1920), 216.10. Less demurrage chargeable to contractor paid by Supply Officer (authorized by Bu. Y&D let. 2469, Sept. 7, 1920), $19.00"

Court: This voucher was made up on the same basis as that of April 16?

A. Exactly so, sir.

Mr. White: The basis of special deposit was not fixed in the letter of April 16, was it?

A. That was fixed in the contract.

42 Q. But the sum of $216.10 is not fixed in the letter of April 16. It is simply fixed as liquidated damages.

A. And authorized as final settlement.

Q. It just did what it said, and nothing more. I understand. You have these previous vouchers in this case, have you not?

A. I have.

Q. Changes G and H on the page next to the last have never appeared in any other voucher before, have they?

Mr. McDonald: Objects to the line of testimony on the ground that it makes no difference whether the final voucher was sent to Arnold or not, when the Bureau indicated the basis of final settlement.

Overruled.

Exception.

Witness: That appears not to be on the preceding voucher.

Q. How about F?

A. F is contained on the last previous voucher, the last one that was paid.

Q. The next item, $3,476.08, that has not appeared on any previous voucher, either, has it?

A. That is something that was established in the original contract.

Q. I didn't ask you that, Commander; I beg your pardon! Does it appear on any previous voucher? While you are looking, you might look for the cement item, too.

A. Yes, sir, the cement item appears on earlier vouchers from time to time, as furnished.

Court: You say that three thousand was included in the original contract as fixed on the 16th April, 1920?

A. No, that letter did not refer to the steel. It was specified that the Government would allow the contractor for the difference between the steel price at the time of preparing his bid, and what he actually had to pay, to protect him against a rising market.

Mr. White: And the amount that was allowed appears on this voucher for the first time?

A. I have not found it on any other.

Q That is according to my checking over; and I want the Commander to have an opportunity to look it over. Have you

43 looked sufficiently to answer, to your satisfaction?

A. One would have to go over all the vouchers, line by line, to state positively.

Q. I want to show that Items G and H, and the steel, and part of the sums for cement, liquidated damages, and the demurrage item,

never appeared on the vouchers previous to the final voucher. That is what I want to get at.

Mr. White: You testified, Commander Burrell, about the practice in the Department. I will ask you just a few questions about what happened in the Department at a certain stage. After what is called the voucher is prepared by the Public Works Officer, I understand it is sent to the contractor for his signature first?

A. That is correct.

Q. And if he signs it, he sends it back to the Public Works Officer, who then signs it?

A. That is right.

Q. Then it goes to the Bureau of Yards & Docks?

A. Are you talking about the final voucher? That is true of the final voucher; not of the others.

Q. The final voucher, then, goes to whom? Do you know the actual practice in the Bureau, the route it takes, its routing slip? Do you personally know?

A. The different desks it goes to in Washington?

Q. Yes, sir. First let me ask you if you know about that routing slip on it?

A. Yes, sir, I do.

Q. Just describe what happens to it after it goes to the Bureau; where it goes, and what is required in this routing slip, and the procedure.

A. I don't think I am a competent witness on that subject, your Honor (To Court).

Court: What route it follows?

A. The different desks that voucher travels to, in the Department. My duties are at the Station.

Court: He doesn't know.

Mr. White: But you do know that it has to go over certain desks and receive certain action before it is finally passed for payment?

A. The voucher is reviewed by certain individuals in the Bureau.

Q. Do you know whether or not the last action taken after it is reviewed is by the Chief of the Bureau of Yards and Docks? That is correct, isn't it?

44 A. The last step—the paper transmitting the voucher back to the Station is prepared for his signature either by the Chief, or the Assistant Chief of the Bureau of Y. & D.

Q. I am asking you if you know if his approval is the last act?

A. Ordinarily his approval would be the last step in Washington.

Redirect:

Mr. McDonald: Commander, the payment of this voucher that Mr. White refers to, of course would never be made if the contractor retained the voucher in his possession, and did not execute the release?

Objection.

A. The contract itself fixes that—specifies that.

Court: Specifies what? If he fails to present his voucher, it would never be paid!

A. That is a foregone conclusion.

Court: Wasn't that the question you asked?

Mr. McDonald: If he didn't execute the final release on the voucher, that no check would ever be issued in payment.

Court: Is that the regulation?

Witness: Yes, sir, that is correct.

Mr. McDonald: There is some testimony here about an item for public utilities, that appeared on the voucher dated in September. Will you kindly explain that procedure, and the significance of that item?

Objection.

Mr. McDonald: Attention has been called to an item of $216.10 charged against Mr. Arnold in September. If I understand the purport of their question, it is to show that the settlement was made in September, and not in April. The purpose of this question is to bring out from this witness whether or not the putting of that item into that voucher of September affected the basis of settlement that the Bureau of Yards & Docks had authorized.

45 Court: He has already testified that the settlement was made upon the original basis as stated in the memorandum of 16th April; the statement was made upon that basis, the amount calculated; and the only thing done thereafter was to deduct some debits claimed for these public utilities.

Witness: That is correct, and the amount of that indebtedness had been determined before the April letter, so that there was no change on the score of utilities subsequent to the April letter. I think it would be pertinent to read one sentence in here that relates to final settlement. The last sentence of the paragraph. Paragraph 29, Payments and Reservations. (Reads)

"Upon the completion of the contract, the balance due on account thereof will be covered by similar vouchers, subject to any credits in favor of the Government; provided that the contractor shall first execute and deliver a final release to the Government in such form and containing such provisions as shall be approved by the Navy Department, of claims against the Government arising under or by virtue of the contract."

Court: That is in the original contract?

A. Yes sir, in the original contract.

Recross:

Mr. White: This final voucher No. 14 is the one referred to in what you have just read; is that right?

A. That is correct.

E. R. HEYWARD, Recalled.

Mr. McDonald: (Hands letter to the Court.)
Mr. White: We admit that that letter was sent, and object to it on the ground that it is immaterial and irrelevant.
Court: You admit the receipt of it?
Mr. White: Yes, your Honor.

Admitted by Court.
Exception.

46 Exhibit #19, carbon copy letter December 6, 1918, Guimarin to Arnold.

(Letter read to the jury.)

Mr. McDonald: Mr. Heyward, I will ask you if at any time you received any letter from Arnold & Co., objecting to the character of the work, and saying that they would not accept the building?

Objection.
Overruled.

Witness: No, sir, I have no recollection of receiving any such letter.

Plaintiff rests.

Commander G. S. BURRELL, recalled.

Direct:

Mr. White wishes to introduce the preceding vouchers.
Court: Did you find, Commander Burrell, that these items were not in the original?
Comdr. G. S. Burrell (answers from the floor): The items of the contract require the contractor to furnish everything. Then the credit was taken, for the cement, month by month, as furnished; and I find entries on a number of vouchers of the several amounts, including Feb. 3 voucher and Feb. 28,—July, August, September, October, November, all 1918.
Court: In which the cement is mentioned. Not the other, was it?
A. The other was for structural steel. It was specified before letting the contract that the contractor should name the price, quotation, which he had obtained from the manufacturers, and on which his proposal to the Government was based. That the Government reserves the right to either furnish him the steel in kind, and thereby give him credit for the steel, or else to instruct him to buy his steel in open market; in which case the Government would
47 pay him the difference between the original quotation obtained from the manufacturers, and the price he actually had to pay for the cement. That would protect the contractor on a rising market. The Public Works Officer was instructed in the beginning,

that that would be accounted for in the final voucher; so that that item occurs in the final voucher only.

Court: Was it considered in the memorandum fixing the amount, of the 16th April, 1920?

A. No, sir. That was something that had been determined in letting the contract, and its status was not affected by the April contract.

Mr. White: But the amount of it was fixed in the final voucher for the first time?

A. Yes, sir.

Court: I will let these go in, if you wish. You can produce all the succeeding vouchers, and show it is not on each of those.

Mr. White: I can simplify that by asking Commander Burrell to say that these are the copies. These appear to be the green copies of the original vouchers that are sent to the contractor, and to be kept by him, under your practice?

A. Yes, sir, they do.

Q. And you have not gone through them in detail to see whether the changes have been made?

A. I have never examined the papers.

Q. But they have all the appearance of the ones that were sent, have they?

A. They do. They would have to be verified, to absolutely identify them.

Court: I will let them in, and if on identification they find anything erroneous, you will have to have them corrected.

Exhibit #20, carbon copy voucher by defendant.

Cross-examination:

Mr. McDonald: Commander, did the item of structural steel—had that item been actually computed in your office on April 16?

A. It had been.

48 Objection: Utterly immaterial. It was not communicated to the defendant.

Defendant rests.

At the close of all the testimony defendants moved the Court to direct a verdict in their favor for the reason that the evidence and all the inferences which the jury could justifiably draw therefrom would be insufficient to support a verdict in favor of the plaintiff, the grounds of said motion being more particularly set forth as follows:

I.

Because there is an entire failure of proof of a final settlement within the terms of the Act.

II.

Because there is no evidence to show administrative determination of amount due R. H. Arnold and Company by the United States or by United States to defendant, Arnold.

III.

Because the entire evidence shows the date of final settlement, if any final settlement there was, was not six months or more prior to the commencement of this action.

IV.

Because the evidence fails to show that there was such completion and final settlement as is contemplated by the Act six months or more, and within one year, prior to the commencement of this action.

V.

Because there is a variance between the claim of plaintiff as shown in his petition and in the proof.

49 VI.

Because the evidence fails to show acceptance of the work done by petitioner under his contract as alleged.

VII.

Because there is no valid proof of the value of the additional work as alleged to have been done by the plaintiff under his contract from defendant, Arnold.

VIII.

Because there is no valid proof of performance of plaintiff's contract.

Thereupon the Court overruled the said motion of the defendants, to which ruling of the Court defendants excepted for the reasons set forth in each of the foregoing grounds, which exceptions were then and there allowed by the Court. The Court, however, directed a verdict for the plaintiff, W. B. Guimarin & Company, for Nine Thousand Thirty-Five Dollars and Fifty-Nine Cents ($9,035.59) and exception thereto was duly taken and allowed in behalf of defendants.

The Court thereupon passed the following order:

(Order of Judgment heretofore copied in record.)

Defendants excepted to the foregoing order upon the grounds set forth in their motion for a direction of a verdict and upon the further ground that the Court was without authority to order judgment against said defendants for the full amount of the Indemnity Bond in the sum of Sixty-five thousand one hundred and ninety ($65,190.00) Dollars, and upon the still further ground that the Court was without authority to order a reference to a master of the claims of the intervenors herein, which exception was then and there allowed by the Court.

By order of Court the original exhibits in evidence are to be forwarded by the Clerk to the Clerk of the Court of Appeals.

50 And the defendants pray that this, their Bill of Exceptions may be allowed, settled and signed.

LOGAN & GRACE,
WILLIAM HENRY WHITE,
ELWOOD P. MOREY,
Attys. for Plaintiffs in Error.

EXHIBITS IN EVIDENCE.

EXHIBIT ONE.

Sub-contract between R. H. Arnold Company and W. B. Guimarin and Company, dated Oct. 4, 1917.

EXHIBIT TWO.

Columbia, S. C., Dec. 19th, 1918.

R. H. Arnold Co. in account with W. B. Guimarin & Company, Heating and Plumbing Contractors.

To Contract			$9,950.00
" Addition-l Radiators, Change "C," our letter 2/17/18			293.62
" Additional Plumbing Charge "D" our letter 5/11/18			3,383.50
" Changing inserts for Heating, Pipes, Charge "F"			29.00
			$13,656.12
May 21. By changes in Specification Our letter 12/4/18		$185.45	
June 15. By cash		900.00	
July 2. By cash (At. advance Mr. Guimarin in Wash.)		100.00	
Sept. 14. By cash		3,756.81	
Oct. 2. By cash		140.50	
51 Oct. 24. By cash		879.85	
		$5,962.61	$5,962.61
Total credits			$7,693.51

EXHIBIT THREE.

Letter dated Dec. 21, 1918, Arnold Company to Guimarin & Company, reading as follows:

We are in receipt of your favor of the 19th inst. enclosing statement of your account for the plumbing and sewering installed in the above building and have noted your request for a payment on account of same.

We regret very much to say that owing to the absence from the city of both Mr. Arnold and Mr. Homann, we have no authority to act in the matter. It will doubtless receive prompt attention upon their return the early part of Jan.

(Signed) R. H. ARNOLD CO.,
By E. F. ROSENHEIM,
Office Manager.

EXHIBIT FOUR.

Letter dated Jan. 11th, 1919, Guimarin & Company to Arnold Company, reading as follows:

We wired you on the 9th inst. to let us have reply to our letter Jan. 1st, in regard to payment due us on the Navy Yard job, Spec. #2469, but have no *to* reply from you.

Kindly let us have telegraphic reply to our telegram referred to, if you can give us the information, and advise us if either Mr. Arnold or Mr. Homann have returned to the office.

EXHIBIT FIVE.

Letter dated Jan. 16, 1919, Arnold Co. to Guimarin & Co., reading as *d*ollows:

In reply to your telegram and letter regarding payment
52 on above specification, we beg to state that the Government has not yet accepted the building.

We are, therefore obliged to defer payment for the time being.

(Signed) R. H. ARNOLD CO.,
By FRANCIS F. GUNEZY,
Auditor.

EXHIBIT SIX.

Letter dated April 17, 1919, Guimarin & Company to R. H. Arnold Company, reading as follows:

Referring to our recent letters *to* regard to our account; we have heard nothing from you, and will thank you to let us have reply.

EXHIBIT SEVEN.

Letter dated April 23, 1919, Arnold Company to Guimarin & Company, reading as follows:

This will acknowledge receipt of your letter of April 17th. We are not in a position to give you any intelligent information at this writing, and trust that the time is not far distant when we will be able to do so. The Public Works Officer has not so far furnished us with official manifestation of acceptance of the work, which we have been expecting for some time.

(Signed) R. H. ARNOLD COMPANY,
By JOHN S. STUM.

EXHIBIT EIGHT.

Letter dated April 26, 1919, Guimarin & Company to Arnold Company, reading as follows:

We have your letter of the 23rd, but you do not answer our recent letter. Please advise why you do not pay us our proportion of the last payment, which you received from the Government on the Charleston job. We are aware you have not received an acceptance of the building, but we are also aware you have not paid us our proportion of the last payment, which you received, and it is this
53 payment which we have been writing about. Please advise us by return mail in regard to this matter.

EXHIBIT NINE.

Letter dated May 16, 1919, Arnold Company to Guimarin & Company, reading as follows:

This will acknowledge receipt of your letter of 26th ult., and in reply will say that the matter of your account will receive our prompt and earnest consideration just as soon as practicable.

(Signed) R. H. ARNOLD COMPANY,
By JOHN S. STUM.

EXHIBIT TEN.

Letter dated Feb. 7, 1918, Guimarin & Company to Arnold Company, reading as follows:

Replying to your letter of Jan. 28th. We attach hereto price on addition to the above contract as per copy of letter from the Public Works Officer, addressed to you under date of Jan. 22nd.

To this letter is attached estimate referred to in above letter, amounting to $293.62.

EXHIBIT ELEVEN.

Letter dated March 30, 1918, Arnold Company to Guimarin & Company, reading as follows:

You are hereby advised that we are in receipt of a letter from the Public Works Officer under date of March 27th in which he authorizes us to instruct you to arrange for the installation of the additional radiators in the above building, as per your itemized proposal attached to your letter of February 7, 1918. The amount involved in making such changes will be determined in accordance with Par. 17 of the General Provisions.

We would ask you to book this order and arrange for the
54 installation of these additional radiators at the proper time.

By so doing you will greatly oblige,

(Signed) R. H. ARNOLD CO.,
By A. F. ROSENHEIM,
Office Manager.

EXHIBIT TWELVE.

Letter dated May 11, 1918, Guimarin & Company to Arnold Company, reading as follows:

Referring to your recent letter, we enclose herewith estimate in duplicate covering the additions to plumbing as shown on blue print accompanying your letter.

Trusting this is the information you wish, we are,

——— ———.

To this letter is attached estimate of additional plumbing referred to therein and amounting to $3,383.50.

EXHIBIT THIRTEEN.

Letter dated May 25, 1918, Arnold Company to Guimarin & Company, reading as follows:

You have verbally informed us that all your pipe and fittings for roughing-in was being shipped from Columbia, May 20th, all galvanized pipe and fittings from General Fire Extinguisher Co., Charlotte, N. C., on May 22nd and all fixtures from Douglas Co., of Washington, D. C. to be shipped from Cincinnati, O. That is all the information you imparted as to delivery of your materials, though you promised to let us know further particulars concerning shipment of fixtures upon receipt of wire from Douglas Co. None of your materials, but some sheet metal sleeves have arrived to date.

How about your steam piping, covering, radiators, hose racks, hose, valves, etc.?

Please write us a letter as requested, setting forth in detail, each of your materials, name of furnisher, shipping point, date of shipment, receiving carrier, whether carload or less, if carload give num-

ter, etc., in fact all particulars so we may solicit the help of the government in expediting delivery.

55 The Public Works Officer wants all the information at once, and we request your response by return mail.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

"P. S.—This will confirm verbal instructions given you, upon receipt of same from Bureau of Yards & Docks to proceed with additional toilet room work in first, third and fourth stories as per blue prints by Public Works Officer. Compensation for same will be made you in accordance with the original contract between us.

R. H. ARNOLD CO.,
By RALPH E. HOMANN."

EXHIBIT FOURTEEN.

Seven letters, Arnold Company to Guimarin Company, as follows:

Letter March 23, 1918.

In reply to your favor of the 20th inst. regarding the changes in the heating system of the above building, will say that we have this day sent a copy of your letter to the Public Works Officer, requesting immediate action, so that you may purchase the materials required while the same are still to be had.

We shall notify you promptly upon receipt of word from him as to his wishes relative thereto.

Another matter to which your especial attention is directed, namely; the requirements of the specifications, calling for the submission to the Public Works Officer for approval, of samples and sketches showing the arrangement of your supplies and sewers, stacks and so on, before you proceed with your work. Look at your specifications and note where such are referred to then lose no time in takinng the matter up with the Officer in charge.

Still another matter which is of very great importance, namely; to arrange that such inserts as are necessary to support your pipe work, are furnished and set in their proper places by your men before the work has proceeded too far.

56 None of these should be overlooked and as they are specified to be supplied by you, no cutting of concrete will be permitted for the purpose of securing your hangers afterwards.

(Signed) R. H. ARNOLD,
By A. F. ROSENHEIM,
Office Manager.

Letter March 26, 1918.

We would like to have you submit a proposal on furnishing and installing in position in the building, seven (7) vertical lines of water leaders extending from the roof to the sewer below the basement

floor. Referring to your copy of the specifications for this building, you will observe that these are to be of five and six inch diameter of wrought iron screw pipe. Your figure should include connection with the sewers, but the connections with the outlet boxes at the top, will be made by the sheet metal contractor.

We are rather anxious to close this matter without undue loss of time and to this end, if you haven't a copy of the plans and specifications, probably you may have to go to Charleston shortly relative your other work there and you can then consult them. Otherwise we shall send them to you from here on receipt of your reply.

Thanking you for your prompt attention, we are,

(Signed) R. H. ARNOLD CO.,
By A. F. ROSENHEIM,
Office Manager.

Letter May 8, 1918.

We wrote you under date of Mar. 23rd, 1918, directing your attention to the requirements of the specifications covering the submission by you, to the Public Works Officer for approval, plans or sketches showing the complete layout of all plumbing and heating lines and indicating the method of supporting the same.

We were very much surprised to receive a letter from the Public Works Officer this morning advising us that you had not yet submitted such plans, and are very much at a loss to understand
57 why you have failed to give the necessary attention to a matter of such importance.

We take this occasion to again request you to prepare a plan of the layout of your work and to submit it to the Public Works Officer without further delay. We would very much appreciate your co-operation to this extent and thank you accordingly.

Awaiting your reply by early mail, we are,

(Signed) R. H. ARNOLD CO.,
By A. F. ROSENHEIM,
Office Manager.

Letter May 18, 1918.

We are in receipt of copy of your estimate recently submitted to our Charleston office, covering the installation of the plumbing fixtures required for the additional toilets on the 1st, 3rd and 4th floors of the above specifications.

We have to advise you that your quotation is so much in excess of the estimated cost arrived at by a Board appointed under Par. 17 of the General Provisions of this contract, that we find it necessary to request you to carefully re-check your quantities and prices in order to discover whether any errors have been made in compiling it.

Perhaps this matter has already been brought to your attention by our Superintendent at Charleston, in which case, no harm will have been done but we desire a reply at your earliest convenience.

Thanking you for your usual prompt attention, we are,
(Signed) R. H. ARNOLD CO.,
By A. F. ROSENHEIM,
Office Manager.

Letter May 20, 1918.

For your information we beg to hand you herewith copy of letter received from the Public Works Officer under date May 15th, accompanying the return of your plan showing the layout of the heating system for the above building, duly approved, and directing your attention to the fact that this plan contains no details of
58 the method proposed for supporting the supply and return pipes from the soffit of the second floor.

We would ask you to be good enough to furnish such details promptly and also make the provision required for locating and setting the "inserts" and "sleeves" before the concrete slabs are poured so as to take care of all vertical lines of pipes, both heating and plumbing, thereby obviating the necessity of cutting thru the concrete after it has been poured.

Requesting your careful attention to the foregoing, we are,
(Signed) R. H. ARNOLD CO.,
By A. F. ROSENHEIM,
Office Manager.

Letter May 15, 1918.

Herewith enclosed one print of plan of a heating system submitted to this office by W. B. Guimarin & Co., showing layout of the heating system on the second floor of the general storehouse which you are constructing under the above contract, this drawing marked approved.

This, however, shows no details of the method for supporting the supply and return pipes from soffit of the second floor.

Your attention is called to the fact that provision must be made in setting any inserts that may be required so that no delay or irregularities may be encountered for installing this work.

Your attention is called also to the fact sleeves and proper provision for installation of all plumbing work should be installed to proper dimensions by the plumber for all toilet fixtures. This matter should be given prompt attention so as not to cause any inconvenience as the concrete slab work progresses.

(Signed) H. G. LEHRBACH,
Asst. Civil Engineer, U. S. Navy.

Letter May 31, 1918.

Replying to your inquiry made thru our Charleston Office this is to inform you that our contract with the Government for
59 the erection of this building is accompanied by the bond provided by law for the protection of those who furnish material and labor.

For particulars of same, reference is hereby made to the original bond on file with the Bureau of Yards and Docks.

(Signed) R. H. ARNOLD CO.,
By A. F. ROSENHEIM,
Office Manager.

EXHIBIT FIFTEEN.

Nine letters Arnold Company to Guimarin & Company, reading as follows:

Letter June 20, 1918.

You have not replied to our letter of recent date requesting information as to the shipment and arrival of your materials.

We cannot too strongly impress upon you the importance of giving the matter of material deliveries your most prompt and careful attention. As before explained to you, the receipt of the information requested will make it possible for the Government to assist in the securing deliveries. The building is now nearing completion and we are very much afraid same will be later than it should on account of late arrival of your materials.

Requesting your immediate reply, we remain,

(Signed) R. H. ARNOLD COMPANY,
By RALPH E. HOMANN.

Letter May 20*th*, 1918.

Please note attached copy of letter from the Public Works Officer, dated May 15th, 1918, which, you read while here.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

Letter June 24, 1918.

Replying to yours of the 22nd inst. we beg to state that
60 we have received your letter reporting arrival of pipe and fittings and shipment of fixtures. Our recent letter was written for the very reason that you have not replied concerning the balance of your materials required for the job.

Please do not simply wait for the shippers to voluntarily supply you with the information but keep constantly after them, for all of the goods should have been shipped long before now.

Will you please immediately communicate with all such furnishers again and report latest news to us.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

P. S.—Did the shipment of fixtures include the fixtures for the additional toilets, etc.? If not, when will same be shipped?

Letter July 6, 1918.

Your letter of July 3rd replying to ours of June 26th fails to give the estimate requested in itemized form as we asked. Will you please forward itemized estimate.

We are still awaiting to hear from you concerning delivery of materials, though it is true that your man on the job has given some verbally. We are especially anxious to know concerning the delivery of the extra fixtures, no one to date having even given us any information as to their shipment.

Will you please write us a letter giving in full all the latest information as to the status of delivery of all undelivered materials.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

Letter August 23*rd,* 1918.

Replying to yours of August 20th we suppose Mr. Guimarin has returned to your office by now and has advised you of our conference here.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

61 *Letter September* 3*rd,* 1918.

The Public Works Officer has written asking for a statement covering all materials undelivered at the building.

In order that we may promptly impart the information elicited it is requested that you submit by return mail an itemized list of any and all materials embraced within your contract and not actually delivered at the building.

Please accompany same by accurate information as to date of shipment, with full shipping particulars if or when shipped, as previously outlined.

Since previous correspondence shortages may have been discovered. Please, therefore, reply at all events.

Then also such information has not been forwarded concerning materials for certain extra work.

Requesting your prompt attention, we remain,

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

Letter September 24*th,* 1918.

Should you have occasion to ship further materials to this job it is requested that in so doing you observe the rules and regulations contained in Circulars Nos. 14 and 16, Navy Department, Bureau of Supplies and Accounts, Division of Inland Traffic.

These set forth directions for expediting delivery.

(Signed) R. H. ARNOLD COMPANY,
By R. E. HOMANN,
Per A.

Letter Dated October 14th, 1918.

Replying to yours of October 12th we beg to state that the Government's payment for October 1st has not yet come forward.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

Letter November 30th, 1918.

Replying to yours of November 25th we beg to state that
62 we have not yet received settlement from the Government for the month of October. Whenever its receipts makes possible settlement of your payment for October we shall be pleased to communicate further with you.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

EXHIBIT SIXTEEN.

Letter dated June 26, 1918, Arnold Company to Guimarin & Company, reading as follows:

You have been directed to move the office and toilets from the second story to the fourth story. Will you please let us know at once what, if any, additional cost is entailed by this change. Please submit same in itemized form.

(Signed) R. H. ARNOLD CO.,
By RALPH E. HOMANN.

Attached to the above letter is copy of letter dated July 3, 1918, from Guimarin & Company to Arnold Company, reading as follows:

Replying to your letter of June 26th in regard to the above. Beg to advise there will be an additional charge of twenty six ($26.00) for making this change.

EXHIBIT SEVENTEEN.

Certified copy of original contract #2469, dated October 3, 1917.

Bond of Globe Indemnity Company.

Bond.

Know all men by these presents, that We, R. H. Arnold, a citizen of the State of California, doing business under the firm name of R. H. Arnold Company, with office at 629 Woodward Building, Washington, District of Columbia, as principal, and Globe
63 Indemnity Company, a corporation created under the laws of the State of New York, as surety, are held and firmly bound unto the United States of America in the full and just sum

of Sixty-five Thousand One Hundred Ninety Dollars ($65,190) lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves, our heirs and executors and administrators, and successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3rd day of October, A. D. 1917.

The condition of this Obligation is such, that if the above bounden principal, R. H. Arnold, doing business under the firm name of R. H. Arnold Company, shall well and truly perform and fulfill his contract, dated October 3rd, 1917, entered into with the United States for constructing complete at the Navy Yard, Charleston, South Carolina, a reinforced concrete building for use as a general storehouse, in accordance with specifications No. 2469, conforming in all respects with the stipulations, covenants, and conditions of said contract, as it now exists or may be modified according to its terms, and shall promptly make payments to all persons supplying him with labor and materials in the prosecution of the w[illegible] provided for in the aforesaid contract, then this obligation to be void and of no effect; otherwise to be and remain in full force and virtue.

R. H. ARNOLD, DOING BUSINESS UNDER THE FIRM NAME OF R. H. ARNOLD COMPANY. [SEAL.]
[SEAL.]
GLOBE INDEMNITY COMPANY, [SEAL.]
By R. B. CUMMINGS,
Attorney in Fact.

Signed, sealed and delivered in the presence of
R. A. THOMPSON.

64 Attest:
[SEAL.] WM. H. WELSH,
Attorney in Fact.

EXHIBIT "B."

EXHIBIT EIGHTEEN.

Photo print of letter from Bureau of Yards & Docks, Navy Yard, Charleston, S. C., to Arnold & Company, stamped with date April 16, 1920, but dated April 20, 1920, and reading as follows:

1. The Yard is in receipt of authority dated April 16, 1920, from Bureau of Yards and Docks, to prepare final voucher under the above contract, as follows:

"The contract, of which a copy was delivered to the contractor October 9, 1917, required performance within 120 days thereafter; that is, by February 6, 1918. The building was substantially completed November 30, 1918, so as to allow the use of it by the Govern-

ment, and that date will accordingly be treated as that of completion for the purpose of the damage clause, although the work was not then entirely finished and certain items of it were not substantially eliminated from the contract. The entire delay of 297 days was, it is clear from reference (*a*), owing to causes *from* which the contractor is responsible, and accordingly liquidated damages therefor, amounting, at the rate of $50.00 a day, to $14,850, will be deducted from the stipulated price. Final payment under the contract on this basis is authorized."

2. Your attention has several times been called to the fact that your Special Deposit Account is overexpended $216.10. Will you kindly forward certified check, payable to the Commandant, Navy Yard, S. C., in this amount so that final voucher may be prepared and forwarded to you.

3. Will you kindly advise whether you are prepared to execute final voucher and unqualified release of claims, prepared on
65 basis of Bu. Y. & D. authority above noted.

EXHIBIT NINETEEN.

Letter dated Dec. 6, 1918, Guimarin & Company to Arnold Company, reading as follows:

Referring to conversation your Mr. Homann had with Mr. Guimarin in Charleston a few days ago, we trust you will now let us have check for the amount due us on the above job. We also wish to advise we have completed this contract and extras, but the Government representative refuses to accept it until the building is completed. We, therefore, drained all the pipes, put salt in the traps to keep them from freezing, and left the work in care of your superintendent.

EXHIBIT TWENTY.

Letter dated 20 September, 1920, G. S. Burrell, Public Works Officer, to Arnold Company, reading as follows:

1. There is enclosed herewith final voucher No. 14 covering balance due you including reservations under the above contract and deducting liquidated damages and other claims of the government as authorized by Bureau of Yards and Docks letters #2469 of April 16, 1920, and September 7, 1920. There is also enclosed, in quadruplicate, final release of the above contract. It is requested that you sign the original Voucher No. 15 as well as three copies of the final release and return the same to this office where the voucher will be placed in the proper channel for prompt payment. You may retain the green copies of the voucher and the fourth copy of the final release for your files.

The enclosed final voucher #14, consisting of four pages, at the top of the first two pages of which is typed "Final Voucher," reads substantially as follows:

Dept. No. 866.
Voucher No. 14.
Contract No. 2469.
Date Oct. 3, 1917.
Appropriation No. 8209, Naval Emergency Fund, Subhead (Y. & D. Allotment.)
L-J.
Title 13-X-2.
Allot. Nos. 8209-12,
8209-15, 9209-1.

4—855

Date of delivery or service, April 17, 1920.

The United States to R. H. Arnold Company, 629 Woodward Building, Washington, D. C.

"General Storehouse Building, Navy Yard, Charleston, S. C."

"Final Voucher."

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cubic yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2a.	" (placed) 1,206 at.....	5	00	.....	6030	00
3.	Concrete 1:2–½:5 (del.) 1,227 c. y. at.....	6	00	.....	7362	00
3a.	" 1:2–½:5 (placed) 1,227 c. y. at.....	3	00	.....	3681	00
4.	" 1:2:4 (del.) 3,481 c. y. at.....	6	50	.....	22626	50
4a.	" 1:2:4 (placed) 3,481 c. y. at.....	3	00	.....	10443	00
5.	" 1:1–½:3 (del.) 374 c. y. at.....	7	00	.....	2618	00
5a.	" 1:1:½:3 (pla.) 374 c. y. at.....	3	00	.....	1122	00
6.	" 1.10 (del.) 350 c. y. at.....	2	50	.....	875	00
6a.	" 1:10 (pla.) 350 c. y. at.....	3	00	.....	1050	00

Final Voucher.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
7.	Forms (del.) 364 M' B. M. at.....	20	00	.....	10920	00
7a.	" (placed) 364 M' B. M. at.....	34	00	.....	12376	00
8.	" interior (Del.) 150 at.....	10	00	.....	1500	00
8a.	" " (placed) 150 at.....	5	00	.....	750	00
9.	Reinforcing steel (del.) 275 tons at.....	67	00	.....	18425	00
9a.	" " (placed) 275 tons at.....	23	50	.....	6462	50
10.	Cement floor 6" (del.) 19,200 sq. ft. at.....	0	13	.....	2496	00
10a.	" " 6" (placed) 19,200 sq. ft. at.....	0	10	.....	1920	00
11.	" topping (del.) 72,000 sq. ft. at.....	0	06	.....	4320	00
11a.	" " (placed) 72,000 " at.....	0	0.025	.....	1800	00
12.	" " ½" (del.) 19,200 " at.....	0	02	.....	384	00
12a.	" " ½" (placed) 19,200 sq. ft. at.....	0	01	.....	192	00
13.	" steps (del.) 656 L. Ft. at.....	0	05	.....	32	80
13a.	" " (placed) 656 L. Ft. at.....	0	10	.....	65	60
14.	HYd. Lime (del.) 18,715 lbs. at.....	0	01	.....	187	15
15.	Plastering (del.) 3,000 sq. yds. at.....	0	10	.....	300	00
15a.	" (placed) 3,000 " " at.....	0	40	.....	1200	00
16.	Brickwork (del.) 112 M at.....	15	00	.....	1680	00
16a.	" (placed) 112 M at.....	20	00	.....	2240	00
17.	Hollow tile 6" (del.) 9,563 each at.....	0	15	.....	1434	45
17a.	" " 6" (placed) 9,563 each at.....	0	12	.....	1147	53
18.	" " 8" (del.) 432 each at.....	0	18	.....	77	76
18a.	" " 8" (placed) 432 each at.....	0	14	.....	60	48
19.	Structural steel (del.) 29 tons at.....	150	00	.....	4350	00
19a.	" " (placed) 29 tons at.....	20	00	.....	580	00

20.	Roofing (del.) 197 Sqs. at	5	00	.....	985	00	
20a.	" (placed) 197 sqs. at	2	50	.....	492	50	
21.	Drain boxes (del.) 7 each at	27	00	.....	189	00	
21a.	" " (placed) 7 each at	5	00	.....	35	00	
22.	Gutters (del.) 490 L. Feet at	0	30	.....	147	00	
22a.	" (placed) 490 L. Ft. at	0	15	.....	72	50	
23.	Skylights, marquise (del.) 4,640 sq. ft. at	1	00	.....	4640	00	
23a.	" " (placed) 4,640 sq. ft. at	0	25	.....	1160	00	
24.	Metal doors covered (del.) 1,583 sq. ft. at	1	00	.....	1583	00	
24a.	" " " (placed) 1,583 sq. ft. at	0	40	.....	633	20	
25.	Kalamein doors (del.) 140 sq. ft. at	2	00	.....	280	00	
25a.	" " (placed) 140 sq. ft. at	0	50	.....	70	00	
26.	Doors, lifting & Rolling (del.) 4,600 at	1	80	.....	8280	00	
26a.	" " " " (placed) 4,600 at	0	45	.....	2070	00	
27.	Steel sash (del.) 8454 at	0	50	.....	4227	00	
27a.	" " (placed) 8454 at	0	25	.....	2113	50	
28.	Plumbing fixtures, (del.) 17 each at	75	00	.....	1275	00	
28a.	" " (placed) 17 " at	40	00	.....	680	00	
29.	" pipes (del.) 4,615 L. Ft. at	0	50	.....	2307	50	
29a.	" " (placed) 4,615 L. Ft. at	0	50	.....	2307	50	
30.	Heating radiators (del.) 10 each at	50	00	.....	500	00	
30a.	" " (placed) 10 each at	10	00	.....	100	00	
31.	" pipes (del.) 800 L. Ft. at	0	60	.....	480	00	
31a.	" " (placed) 800 L. Ft.	0	40	.....	320	00	
32.	Hoseracks (del.) 10 at	100	00	.....	1000	00	
32a.	" (placed) 10 at	25	00	.....	250	00	

33.	Roof drainage (del.) Pipes 488 L. Ft. at	1	50	.....	732	00	

Final Voucher.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
33*a*.	Roof drainage (placed)Pipes 488 L. Ft. at.....	1	50	.....	732	00
34.	Electrical work (del.) 309 outlets at.....	15	00	.....	4635	00
34*a*.	" " (placed) 309 " at.....	5	00	.....	1545	00
35.	Painting (del.) 62,000 sq. ft. at.....	0	03	.....	1860	00
35*a*.	" (placed) 62,000 " " at.....	0	03	.....	1860	00
36.	Wood flooring (del.) 4,500 F. B. M. at.....	80	00	.....	360	00
36*a*.	" " (placed(4,500 F. B. M. at.....	45	00	.....	202	50
37.	Spiral conveyor (del.) 100% at.....	1600	00	.....	1600	00
37*a*.	" " (placed) 100% at.....	100	00	.....	100	00
38.	Elevators (del.) 3 at.....	7033	33	.....	21100	00
38*a*.	" (placed) 3, 100% of each at.....	300	00	.....	900	00
39.	Safety treads (del.) 184 each at.....	2	25	.....	414	00
39*a*.	" " (placed) 184 " at.....	0	75	.....	138	00
40.	Stair railing (del.) 350 L. Ft. at.....	0	50	.....	175	00
40*a*.	" " (placed) 350 L. Ft. at.....	0	50	.....	175	00
41.	Hardware (del.) all at.....	1000	00	.....	1000	00
41*a*.	" (placed) all at.....	100	00	.....	100	00
42.	Pumping (placed) 60 days at.....	3	00	.....	180	00
43.	Backfill (placed) 1,000 cu. yds. at.....	1	60	.....	1000	00
44.	Cooper counter flashing (del.) 1,400 No. at.....	0	40	.....	560	00
44*a*.	" " " (placed) 1,400 No. at.....		25	.....	350	00
	Total				217300	00
	Change "A" Increase.....			475 50		
	Change "B" Increase.....			3858 83		

Change "C" Increase	259 90			
Change "D" Increase	4903 70			
Change "D" Decrease	6225 00	CR.		
Change "F" Increase	328 35			
Change "G" Increase	742 50			
Change "H" Decrease	6457 50	CR.		
Total changes—Decreases			2116 72	CR.
Amount due contractor representing difference between bid price and purchase price of X structural and reinforcing steel authorized by Bu. Y. & D.			3476 08	
Ct. 2469 Nov. 4, 1918.				
Charges for amount furnished contractor under paragraph 7	23157 80			
Credit for return of cement sacks	359 00			
Net deduction on account cement			19567 80	CR.
Carried forward			199091 56	

Brought forward		199091 56
Less total net amount of vouchers previously paid, viz:		
Voucher No. 1	7857.00	
" No. 2	9485.10	
" No. 3	19992.28	
" No. 3*a*	380.92	
" No. 4	1498.31	
" No. 5	29695.46	

Final Voucher.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
Voucher No. 5*a*	4107.85					
" No. 6	20265.02					
" No. 7	34735.25					
" No. 8	25995.36					
" No. 9	3804.88					
" No. 10	3884.37					
" No. 11	7782.81					
" No. 12	8834.88					
" No. 13	981.76					
Total					179281	22
					19810	34
Less liquidated damages for 297 days at $50.00 per diem		14850	00			
(Authorized by Bu. Y. & D. Ct. 2469, April 10, 1920)						
Less over expenditure on contractor's special deposit..		216	10			
(Authorized by Bu. Y. & D. Ct. 2469, Sept. 7, 1920)						
Less demurrage chargeable to contractor paid by Supply Officer.						
(Authorized by Bu. Y. & D. Ct. 2469, Sept. 17, 1920)		19				
Total deductions					15085	10
Net amount this voucher					4725	24

Appropriations on chargeable Naval Emergency Fund four thousand seven hundred twenty-five dollars twenty-four cents.

(Signed)
(Signature in typewriting) G. S. BURRELL,
Commander (C. E. C.), U. S. N.,
Public Works Officer.

68*a* The Court instructed the Public Works officer, Commander Burrell, to furnish copies of certain letters referred to in the testimony and copies of all vouchers issued in connection with the work. These letters together with the other exhibits have been ordered by the Court to be forwarded by the clerk to the Clerk of the Court of Appeals.

EXHIBIT 20.

Carbon copies of Vouchers offered by defendant as follows:
Settled, 31, August, 1921.

HENRY A. M. SMITH,
U. S. District Judge.

69 Department No. 866.
Voucher No. 13.
Contract No. 2469.
Date, Jan. 2, 1919.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-J Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service Dec. 31, 1918.
"General Storehouse Building, Navy Yard, Charleston, S C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00
3.	Concrete 1:2½:5 (del.) 1,227 c. y. at.....	6	00	.....	7362	00
3*a*.	" 1:2½:5 (pla.) 1,227 c. y. at.....	3	00	.....	3681	00

4.	" 1:2:4 (del.) 3,406 c. y. at	6	00	.....	32139	00
4a.	" 1:2:4 (pla.) 3,406 c. y. at	3	00	.....	10218	00
5.	" 1:1½:3 (del.) 374 c y. at	7	00	.....	2618	00
5a.	" 1:1½:3 (pla.) 374 c. y. at	3	00	.....	1122	00
6.	" 1:10 (del.) 350 c. y. at	2	50	.....	875	00
6a.	" 1:10 (pla.) 350 c. y. at	3	00	.....	1050	00
7.	Forms (del.) 364 F. B. M. at	30	00	.....	10920	00
7a.	" (placed) 364 F. B. M. at	34	00	.....	12376	00
8.	" interior (del.) 150 at	10	00	.....	1500	00
8a.	" " (placed) 150 at	5	00	.....	750	00
9.	Reinforcing steel 275 tons (del.) at	67	00	.....	18425	00
9a.	" " 275 tons (placed) at	23	50	.....	6462	50
10.	Cement floor 6" (del.) 19,200 sq. ft. at	0	13	.....	2496	00
10a.	" " 6" (pla.) 19,200 sq. ft. at	0	10	.....	1920	00
11.	" topping (del.) 72,000 sq. ft. at	0	06	.....	4320	00
11a.	" " (pla.) 72,000 sq. ft. at	0	025	.....	1800	00
12.	" " ½" (del.) 19,200 sq. ft. at	0	02	.....	384	00
12a.	" " ½" (pla.) 19,200 sq. ft. at	0	01	.....	192	00
13.	" steps (del.) 656 L. Ft. at	0	05	.....	32	80
13a.	" " (placed) 656 L. Ft. at	0	10	.....	65	60
14.	Hyd. Lime (del.) 18,715 lbs. at	0	01	.....	187	15
15.	Plastering (del.) 3,000 sq. yds. at	0	10	.....	300	00
15a.	" (placed) 3,000 sq. yds. at	0	40	.....	1200	00
16.	Brickwork (del.) 112 M. at	15	00	.....	1680	00
16a.	" (placed) 112 M. at	20	00	.....	2240	00
17.	Hollow tile 6" (del.) 9,563 each at	0	15	.....	1434	45
17a.	" " 6" (placed) 9,563 each at	0	12	.....	1147	56
18.	" " 8" (del.) 432 each at	0	18	.....	77	76
18a.	" " 8" (placed) 432 each at	0	14	.....	60	48

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount Dollars.	Cts.
19.	Structural steel (del.) 29 tons at	150	00	.....	4350	00
19*a*.	" " (placed) 29 tons at	20	00	.....	580	00
	Carried forward				$141158	30
	Brought forward				141158	30
20.	Roofing (del.) 197 sqs. at	5	00	.....	985	00
20*a*.	" (placed) 197 sqs. at	2	50	.....	492	50
21.	Drain boxes (del.) 7 each at	27	00	.....	189	00
21*a*.	" " (placed) 7 each at	5	00	.....	35	00
22.	Gutters (del.) 490 L. Ft. at	0	30	.....	147	00
22*a*.	" (placed) 490 L. Ft. at	0	15	.....	73	50
23.	Skylights, marquise (del.) 4,640 sq. ft. a	1	00	.....	4640	00
23*a*.	" (placed) 4,640 sq. ft at	0	25	.....	1160	00
24.	Metal doors covered (del.) 1,583 sq. ft. at	1	00	.....	1583	00
24*a*.	" " " (placed) 1,583 sq. ft. at	0	40	.....	632	20
25.	Kalamein doors (del.) 140 sq. ft. at	2	00	.....	280	00
25*a*.	Kalamein doors (placed) 140 sq. ft. at	0	50	.....	70	00
26.	Doors, lifting & rolling (del.) 4,600 at	1	80	.....	8280	00
26*a*.	" " " " (placed) 4,600 at	0	45	.....	2070	00
27.	Steel sash (del.) 8,454 at	0	50	.....	4227	00
27*a*.	" " (placed) 8,454 at	0	25	.....	2113	50
28.	Plumbing fixtures (del.) 17 each at	75	00	.....	1275	00
28*a*.	" " (placed) 17 each at	40	00	.....	680	00
29.	" pipes (del.) 4,615 L. Ft. at	0	50	.....	2307	50
29*a*.	" " (placed) 4,615 L. Ft. at	0	50	.....	2307	50

30.	Heating radiators (del.) 10 each at	50	00	.....	500	00	
30a.	" " (placed) 10 each at	10	00	.....	100	00	
31.	Heating Pipes (del.) 800 L. Ft. at	0	60	.....	480	00	
70							
31a.	" " (placed) 800 L. Ft. at	0	40	.....	320	00	
32.	Hoseracks (del.) 10 at	100	00	.....	1000	00	
32a.	" (placed) 10 at	25	00	.....	250	00	
33.	Roof drainage (del.) pipes 488 L. Ft. at	1	50	.....	732	00	
33a.	" " pipes (placed) 488 L. Ft. at	0	50	.....	244	00	
34.	Electrical work (del.) 305 outlets at	15	00	.....	4575	00	
34a.	" " (placed) 305 outlets at	5	00	.....	1525	00	
35.	Painting (Del.) 62,000 sq. ft. at	0	03	.....	1860	00	
35a.	" (placed) 62,000 sq. ft. at	0	03	.....	1860	00	
36.	Wood flooring (del.) 4,500 F. B. M. at	80	00	.....	360	00	
36a.	" " (placed) 3,000 F. B. M. at	45	00	.....	135	00	
37.	Spiral conveyor (del.) 100% at	600	00	.....	1600	00	
37a.	" " (placed) 100% at	100	00	.....	100	00	
	Carried forward				190348	00	
	Brought forward				190348	00	
38.	Elevators (del.) 3 at	7033	33	.....	21100	00	
38a.	" (placed) 3, 100% of each at	300	00	.....	900	00	
39.	Safety treads (del.) 184 each at	2	25	.....	414	00	
39a.	" " (placed) 184 each at	0	75	.....	138	00	
40.	Stair railing (del.) 350 L. Ft.	0	50	.....	175	00	
40a.	" " (placed) 350 L. Ft. at	0	50	.....	175	00	

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount Dollars.	Cts.
41.	Hardware (del.) all	1000	00	.....	1000	00
41*a*.	" (placed) all at	100	00	.....	100	00
42.	Pumping (del.) 60 days	3	00	.....	180	00
43.	Backfill (placed) 1,000 cu. yds at	1	00	.....	1000	00
44.	Copper Counter flashing (del.) 1,400 No. at	0	40	.....	560	00
44*a*.	Copper Counter flashing (placed) 1,400 No. at	0	25	.....	350	00
	Change "A":					
	(*a*) Design, pay freight and place 13½ tons reinforcing steel	472	50			
	Change "C":					
	(*a*) Install additional radiators in office space provided by change "B"	290	95			
	(*b*) Install additional lights and wall receptacles	245	85			
	(*c*) Raise pile cut-off and bottom of footings B-11 and C-11 2′ 2″	91	45	CR.		
	(*d*) Substitute 1½″ hose, hose valves and hose racks for 2½″; lay 6″ iron water main along site of building	185	45	CR.		
	Total change "A" and "C"				732	40
	Carried forward				$217172	40

Brought forward				217172	49
Change "B":					
(*a*) Provide additional office rooms on second floor	3269	83			
(*b*) Raise elevation of basement floor footings 6"; reinforce same changing mix	589	00			
Change "D":					
(*a*) Install toilets on 1st, 3rd and 4th floors of general storehouse in accordance with sketches H4-46 and H4-47 and raise pile cut-off in bottom of footings of B-3 and B-4, constructing same in accordance with Yard plan H4-48	4903	70			
Change "E":					
(*a*) Omission of furnishing and installing of twelve (12) freight entrance doors called for by paragraph 93 of the specifications	6225	00	CR.		
Total change "B," "D," and "E"				2537	53
				$219709	93
Carried forward				219709	93

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
	Brought forward				219709	93
71	Change "F":					
	(a) Provide additional plumbing necessary for moving offices from 2nd to 4th floor; move heating pipes leading to offices on 4th floor to avoid interference with sprinkler system; provide necessary labor and material for changing the steel partitions in offices and installing them on 4th instead of 2nd floor; and provide additional labor and material for the construction of offices on 4th floor instead of on 2nd floor.....	328	35	.....	328	35
	Total gross estimate				220038	28
	Less previous gross est.				218947	43
	Gross amnt. this vou.				1090	85
	Less 10% reservation				109	09
	Net amnt. this voucher				981	76
	"Liquidation damages, if any, will be deducted from final voucher."					
	Total				981	76

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.)

\$981.76.

—— ——,

—— ——.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... \$.....

Differences as follows:.....

....

....

Approved for \$.....

DE WITT C. WEBB,
Commander C. E. C., U. S. N.,
Public Works Officer.

—— ——,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for \$—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

72 Department No. 866.
Voucher No. 12.
Contract No. 2469.
Date Dec. 2, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-J Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service Nov. 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00
3.	Concrete 1:2½:5 (del.) 1,227 c. y. at.....	6	00	.....	7362	00
3*a*.	" 1:2½:5 (pla.) 1.227 c. y. at.....	3	00	.....	3681	00

4.	Concrete 1:2:4 (del.) 3,406 c. y. at	6	00	.....	22139	00
4a.	" 1:2:4 (pla.) 3,406 c. y. at	3	00	.....	10218	00
5.	" 1:1½:3 (del.) 374 c. y. at	7	00	.....	2618	00
5a.	" 1:1½:3 (pla.) 374 c. y. at	3	00	.....	1122	00
6.	" 1:10 (del.) 350 c. y. at	2	50	.....	875	00
6a.	" 1:10 (pla.) 350 c. y. at	3	00	.....	1050	00
7.	Forms (del.) 364 F. B. M. at	30	00	.....	10920	00
7a.	" (placed) 364 F. B. M. at	34	00	.....	12376	00
8.	" interior (del.) 150 at	10	00	.....	1500	00
8a.	" " (placed 150 at	5	00	.....	750	00
9.	Reinforcing steel 275 tons (del.) at	67	00	.....	18425	00
9a.	" " 275 tons (placed) at	23	50	.....	6462	50
10.	Cement floor 6" (del.) 19,200 sq. ft. at	0	13	.....	2496	00
10a.	" " 6" (pla.) 19,200 sq. ft. at	0	10	.....	1920	00
11.	" topping (del.) 72,000 sq. ft. at	0	06	.....	4320	00
11a.	" " (pla.) 72,000 sq. ft. at	0	025	.....	1800	00
12.	" " ½" (del. 19,200 sq. ft. at	0	02	.....	384	00
12a.	" " ½" (pla.) 19,200 sq. ft. at	0	01	.....	192	00
13.	" steps (del.) 656 L. Ft. at	0	05	.....	32	80
13a.	" " (placed) 656 L. Ft. at	0	10	.....	65	60
14.	Hyd. Lime (del.) 18,715 lbs. at	0	01	.....	187	15
15.	Plastering (del.) 3,000 sq. yds. at	0	10	.....	300	00
15a.	" (placed) 3,000 sq. yds at	0	40	.....	1200	00
16.	Brickwork (del.) 112 M. at	15	00	.....	1680	00
16a.	" (placed) 112 M. at	20	00	.....	2240	00
17.	Hollow tile 6" (del.) 9,563 each at	0	15	.....	1434	45
17a.	" " 6" (placed) 9,563 each at	0	12	.....	1147	56
18.	" " 8" (del.) 432 each at	0	18	.....	77	76
18a.	" " 8" (placed) 432 each at	0	14	.....	60	48

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
19.	Structural steel (del.) 29 tons at	150	00	.....	4350	00
19*a*.	" " (placed) 29 tons at	20	00	.....	580	00
	Total Forwarded				$141158	30
	Brought forward				141158	30
20.	Roofing (del.) 197 sqs. at	5	00	.....	985	00
20*a*.	" (placed) 197 sqs. at	2	50	.....	492	50
21.	Drain boxes (del.) 7 each at	27	00	.....	189	00
21*a*.	" " (placed) 7 each at	5	00	.....	35	00
22.	Gutters (del.) 490 L. Ft. at	0	30	.....	147	00
22*a*.	" (placed) 490 L. Ft. at	0	15	.....	73	50
23.	Skylights, marquise (del.) 4,640 sq. ft. at	1	00	.....	4640	00
23*a*.	" (placed) 4,640 sq. ft. at	0	25	.....	1160	00
24.	Metal doors covered (del.) 1,583 sq. ft. at	1	00	.....	1583	00
24*a*.	" " " (placed) 1,583 sq. ft. at	0	40	.....	633	20
25.	Kalamein doors (del.) 140 sq. ft. at	2	00	.....	280	00
25*a*.	Kalamein doors (placed) 140 sq. ft. at	0	50	.....	70	00
26.	Doors, lifting & rolling (del.) 4,600 at	1	80	.....	8280	00
26*a*.	" " " " (placed) 3,987	0	45	.....	1794	15
27.	Steel sash (del.) 8,454 at	0	50	.....	4227	00
27*a*.	" " (placed) 8,454 at	0	25	.....	2113	50
28.	Plumbing fixtures (del.) 17 each at	75	00	.....	1275	00
28*a*.	" " (placed) 17 each at	40	00	.....	680	00
29.	" pipes (del.) 4615 L. Ft. at	0	50	.....	2307	50

29*a*.	" " (placed) $4,615 L. Ft. at.....	0	50	.....	2307	50
30.	Heating radiators (del.) 10 each at.....	50	00	.....	500	00
31.	Heating Pipes (del.) 800 L. Ft. at.....	0	60	.....	480	00
73						
31*a*.	" " (placed) 600 L. Ft. at.....	0	40	.....	240	00
32.	Hosecracks (del.) 10 at.....	100	00	.....	1000	00
32*a*.	" (placed) 10 at.....	25	00	.....	250	00
33.	Roof drainage pipes (del.) 488 L. Ft. at.....	1	50	.....	732	00
33*a*.	" " pipes (placed 488 L. Ft. at.....	0	50	.....	244	00
34.	Electrical work (del.) 305 outlets at.....	15	00	.....	4575	00
34*a*.	" " (placed) 250 outlets at.....	5	00	.....	1250	00
35.	Painting (del.) 62,000 sq. ft. at	0	03	.....	1860	00
35*a*.	" (placed) 50,000 sq. ft. at.....	0	03	.....	1500	00
36.	Wood flooring (del.) 4,500 F. B. M. at.....	80	00	.....	360	00
36*a*.	" " (placed) 3,000 F. B. M. at.....	45	00	.....	135	00
37.	Spiral conveyor (del.) 100% at.....	1600	00	.....	1600	00
37*a*.	" " (placed) 100% at.....	100	00	.....	100	00
	Forwarded				$189257	15
	Brought forward				189257	15
38.	Elevators (del.) 3 at	7033	33	.....	21100	00
38*a*.	" (placed) 3, 100% of each at.....	300	00	.....	900	00
39.	Safety treads (del.) 184 each at.....	2	25	.....	414	00
39*a*.	" " (placed) 184 each at.....	0	75	.....	138	00
40.	Stair railing (del.) 350 L. Ft. at.....	0	50	.....	175	00
40*a*.	" " (placed) 350 L. Ft. at.....	0	50	.....	175	00
41.	Hardware (del.) all.....	10	00	.....	1000	00
41*a*.	" (placed) all at.....	100	00	.....	100	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
42.	Pumping (del.) 60 days at.....	3	00	.....	180	00
43.	Backfill (placed) 1,000 cu. yds at.....	1	00	.....	1000	00
44.	Copper Counter flashing (del.) 1400 No. at.....	0	40	.....	560	00
44*a*.	Copper Counter flashing (placed) 1400 No. at.....	0	25	.....	350	00
	Change "A":					
	(*a*) Design, pay freight and place 13½ tons reinforcing steel	472	50			
	Change "C":					
	(*a*) Install additional radiators in office space provided by change "B".....	290	95			
	(*b*) Install additional lights and wall receptacles....	245	85			
	(*c*) Raise pile cut-off and bottom of footings B-11 and C-11 2′ 2″.....	91	45	CR.		
	(*d*) Substitute 1½″ hose, hose valves and hose racks for 2½″; lay 6″ iron water main along site of building	185	45	CR.		
	Total changes "A" and "C".....				732	40
	Forwarded				$216081	55

Brought forward				216081	55
Change "B":					
(*a*) Provide additional office rooms on second floor	3269	83			
(*b*) Raise elevation of basement floor footings 6″; reinforce same changing mix	589	00			
Change "D":					
(*a*) Install toilets on 1st, 3rd and 4th floors of general storehouse in accordance with sketches H4-46 and H4-47 and raise pile cut-off in bottom of footings of B-3 and B-4, constructing same in accordance with Yard plan H4-48	4903	70			
Change "E":					
(*a*) Omission of furnishing and installing of twelve (12) freight entrance doors called for by paragraph 93 of the specifications	6225	00	CR.		
Total change "B," "D," and "E"				2537	53
Forwarded				$218619	08

Voucher for Purchases and Services Other Than Personal.—**Continued.**

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
74	Forwarded				218619	08
	Change "F":					
	(*a*) Provide additional plumbing necessary for moving offices from 2nd to 4th floor; move heating pipes leading to offices on 4th floor to avoid interference with sprinkler system; provide necessary labor and material for changing the steel partitions in offices and installing them on 4th instead of 2nd floor; and provide additional labor and material for the construction of offices on 4th floor instead of on 2nd floor	328	35	.....	328	35
	Total gross estimate				218947	43
	Less previous gross estimate				209128	18
	Gross amount of this voucher				9819	25
	Less 10% reservation				981	93
	Balance				8837	32
	For 1 barrel cement at $2.48				2	48
					8834	84

"Liquidated damages, if any, will be deducted from final voucher."

Total $8834 84

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.)

$8,834.84 —— ——, ——.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

A. H. BOND,
Acting Public Works Officer.

—— ——,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

75 Department No. 666.
Voucher No. 11.
Contract No. 2469.
Date, Nov. 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-WRJ Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service October, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00
3.	Concrete 1:2½:5 (del.) 1,227 c. y. at.....	6	00	.....	7362	00
3*a*.	" 1:2½:5 (pla.) 1,227 c. y. at.....	3	00	.....	3681	00

4.	" 1:2:4 (del.) 3,406 c. y. at	6	50	.....	22139	00
4a.	" 1:2:4 (pla.) 3,406 c. y. at	3	00	.....	10218	00
5.	" 1:1½:3 (del.) 370 c. y. at	7	00	.....	2590	00
5a.	" 1:1½:3 (pla.) 370 c. y. at	3	00	.....	1110	00
6.	" 1:10 (del.) 350 c y. at	2	50	.....	875	00
6a.	" 1:10 (pla.) 350 c. y. at	3	00	.....	1050	00
7.	Forms (del.) 364 F. B. M. at	30	00	.....	10920	00
7a.	" (placed) 364 F. B. M. at	34	00	.....	12376	00
8.	" interior (del.) 150 at	10	00	.....	1500	00
8a.	" " (placed 150 at	5	00	.....	750	00
9.	Reinforcing steel 275 tons (del.) at	87	00	.....	18423	00
9a.	" " 275 tons (placed) at	23	50	.....	6462	50
10.	Cement floor 6" (del.) 19,200 sq. ft. at	0	13	.....	2496	00
10a.	" " 6" (pla.) 19,200 sq. ft. at	0	10	.....	1920	00
11.	" topping (del.) 72,000 sq. ft. at	0	06	.....	4320	00
11a.	" " (pla.) 72,000 sq. ft. at	0	025	.....	1800	00
12.	" " ½" (del. 19,200 sq. ft. at	0	02	.....	384	00
12a.	" " ½" (pla.) 19,200 sq. ft. at	0	01	.....	192	00
13.	" steps (del.) 656 L. Ft. at	0	05	.....	32	80
13a.	" " (placed) 656 L. Ft. at	0	10	.....	65	60
14.	Hyd. Lime (del.) 18,715 lbs. at	0	01	.....	187	15
15.	Plastering (del.) 3,000 sq. yds. at	0	10	.....	300	00
15a.	" (placed) 3,000 sq. yds. at	0	40	.....	1200	00
16.	Brickwork (del.) 112 M. at	15	00	.....	1680	00
16a.	" (placed) 112 M. at	20	00	.....	2240	00
17.	Hollow tile 6" (del.) 9,563 each at	0	15	.....	1434	45
17a.	" " 6" (placed) 9,563 each at	0	12	.....	1147	56
18.	" " 8" (del.) 432 each at	0	18	.....	77	76
18a.	" " 8" (placed) 432 each at	0	14	.....	60	48
19.	Structural steel (del.) 29 tons at	150	00	.....	4350	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
19*a*.	Structural steel (placed) 29 tons at	20	00	.....	580	00
	Total forwarded				$141168	30
	Brought forward				141168	30
20.	Roofing (del.) 197 sqs. at	5	00	.....	985	00
20*a*.	" (placed) 197 sqs. at	2	50	.....	492	50
21.	Drain boxes (del.) 7 each at	27	00	.....	189	00
21*a*.	" " (placed) 7 each at	5	00	.....	35	00
22.	Gutters (del.) 490 L. Ft. at	0	30	.....	147	00
22*a*.	" (placed) 490 L. Ft. at	0	15	.....	73	50
23.	Skylights, marquise (del.) 1,490 sq. ft. at	1	00	.....	1490	00
23*a*.	" (placed) 625 sq. ft. at	0	25	.....	156	25
24.	Metal doors covered (del.) 1,583 sq. ft. at	1	00	.....	1583	00
24*a*.	" " " (placed) 1,583 sq. ft. at	0	40	.....	633	20
25.	Kalamein doors (del.) 140 sq. ft. at	2	00	.....	280	00
25*a*.	Kalamein doors (placed) 140 sq. ft. at	0	50	.....	70	00
26.	Doors, lifting & rolling (del.) 2,450 at	1	80	.....	4410	00
27.	Steel sash (del.) 8,454 at	0	50	.....	4227	00
27*a*.	" " (placed) 7,554 at	0	25	.....	1888	50
28.	Plumbing fixtures (del.) 17 each at	75	00	.....	1275	00
28*a*.	" " (placed) 16 each at	40	00	.....	640	00
29.	" pipes (del.) 4,615 L. Ft. at	0	50	.....	2307	50
29*a*.	" " (placed) 4,550 L. Ft. at	0	50	.....	2275	50
30.	Heating radiators (del.) 10 each at	50	00	.....	500	00

31	Heating Pipes (del) 800 L. Ft. at.....	0	60	.....	480	00
31*a*.	" " (placed) 600 L. Ft. at.....	0	40	.....	240	00
76						
33.	Roof drainage pipes (del.) 488 L. Ft. at.....	1	5[illegible]	.....	732	00
33*a*.	" " pipes (placed 488 L. Ft. at.....	0	50	.....	244	00
34.	Electrical work (del.) 309 outlets at.....	15	00	.....	4635	00
34*a*.	" " (placed) 309 outlets at.....	5	00	.....	925	00
35.	Painting (del.) 2,000 sq. ft. at.....	0	03	.....	60	00
35*a*.	" (placed) 2,000 sq. ft. at.....	0	03	.....	60	00
36.	Wood flooring (del.) 4,500 F. B. M. at.....	80	00	.....	360	00
36*a*.	" " (placed) 3,000 F. B. M. at.....	45	00	.....	135	00
37.	Spiral conveyor (del.) 100% at.....	600	00	.....	1600	00
37*a*.	" " (placed) 100% at.....	100	00	.....	100	00
38.	Elevators (del.) 3 at	7033	33	.....	21100	00
38*a*.	" (placed) 3, 90% of each at.....	300	00	.....	810	00
	Total forwarded				196256	75
	Forward				196256	75
39.	Safety treads (del.) 184 each at.....	2	21	.....	414	00
39*a*.	" " (placed) 184 each at.....	0	75	.....	138	00
40.	Stair railing (del.) 350 L. Ft. at.....	0	50	.....	175	00
40*a*.	" " (placed) 350 L. Ft. at.....	0	50	.....	175	00
41.	Hardware (del.) all at.....	1000	00	.....	1000	00
41*a*.	" (placed) 75% at	100	00	.....	75	00
42.	Pumping (del.) 60 days at.....	3	00	.....	180	00
43.	Backfill (placed) 1,000 cu. yds at.....	1	00	.....	1000	00
44.	Copper Counter flashing (del.) 1,400 No. at.....	0	40	.....	560	00
44*a*.	Copper Counter flashing (placed) 1,200 No. at.....	0	25	.....	300	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
	Change "A":					
	(*a*) Design, pay freight and place 13½ tons reinforcing steel	472	50			
	Change "B":					
	(*a*) Provide additional office rooms on second floor	2969	83			
	(*b*) Raise elevation of basement floor footings 6″; reinforce same changing mix	589	00			
	Total change "A" and "B"				4031	33
	Total carried forward				204305	08
	Total				$204305	08
	Brought forward				204305	08
	Change "C":					
	(*a*) Install additional radiators in office space provided by change "B"	200	00			
	(*b*) Install additional lights and wall receptacles	200	00			
	(*c*) Raise pile cut-off and bottom of footings B-11 and C-11 2′ 2″	91	45	CR.		
	(*d*) Substitute 1½″ hose, hose valves and hose racks for 2½″; lay 6″ iron water main along side of building	185	45	CR.		

Change "D":

(a)	Install toilets on 1st, 3rd and 4th floors of general storehouse in accordance with sketches H4-46 and H4-47 and raise pile cut-off in bottom of footings of B-3 and B-4, constructing same in accordance with Yard plan H4-48.....	4700 00		
	Total changes "C" and "D".....		4823	10
	Total gross estimate.....		209128	18
	Less previous gross estimate.....		199867	23
	Gross amount of this voucher.....		9260	95
	Less 10% reservation.....		926	10
77	Balance		8334	85
	For 223 bbls. cement at $2.4755.....		552	04
	Net amount this voucher.....		7782	81
	Total		$7782	81

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.)

$7,782.81 ——— ———,
——— ———.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

A. H. BOND,
Lieutenant C. E. C., U. S. N.
Acting Public Works Officer.

____ ____,
Chief of Bureau Yards and Docks.

Paid by Check No. 57169, dated Nov. 29, 1918, on the Treasurer of U. S. in favor of the principal for $7,782.81.

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*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

Department No. 866.
Voucher No. 11.
Contract No. 2469.
Date, Nov. 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-WRJ Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service October/18.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00
3.	Concrete 1:2½:5 (del.) 1,227 c. y. at.....	6	00	.....	7362	00
3*a*.	" 1:2½:5 (pla.) 1,227 c. y. at.....	3	00	.....	3681	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
4.	Concrete 1:2:4 (del.) 3,406 c. y. at.....	6	00	.....	22139	00
4*a*.	" 1:2:4 (pla.) 3,406 c. y. at.....	3	00	.....	10218	00
5.	" 1:1½:3 (del.) 370 c. y. at.....	7	00	.....	2590	00
5*a*.	" 1:1½:3 (pla.) 370 c. y. at.....	3	00	.....	1110	00
6.	" 1:10 (del.) 350 c. y. at.....	2	50	.....	875	00
6*a*.	" 1:10 (pla.) 350 c. y. at.....	3	00	.....	1050	00
7.	Forms (del.) 364 F. B. M. at.....	30	00	.....	10920	00
7*a*.	" (placed) 364 F. B. M. at.....	34	00	.....	12376	00
8.	" interi[illegible] (del.) 150 at.....	10	00	.....	1500	00
8*a*.	" " (placed 150 at.....	5	00	.....	750	00
9.	Reinforcing [illegible]el 275 tons (del.) at.....	67	00	.....	18425	00
9*a*.	" 275 tons (placed) at.....	23	50	.....	6462	50
10.	Cement floor 6" (del.) 19,200 sq. ft. at.....	0	13	.....	2496	00
10*a*.	" " 6" (pla.) 19,200 sq. ft. at.....	0	10	.....	1920	00
11.	" topping (del.) 72,000 sq. ft. at.....	0	06	.....	4320	00
11*a*.	" " (pla.) 72.000 sq. ft. at.....	0	025	.....	1800	00
12.	" " ½" (del. 19,200 sq. ft. at.....	0	02	.....	384	00
12*a*.	" " ½" (pla.) 19,200 sq. ft. at.....	0	01	.....	192	00
13.	" steps (del.) 656 L. Ft. at.....	0	05	.....	32	80
13*a*.	" " (placed) 656 L. Ft. at.....	0	10	.....	65	60
14.	Hyd. Lime (del.) 18,715 lbs. at.....	0	01	.....	187	15
15.	Plastering (del.) 3,000 sq. yds. at.....	0	10	.....	300	00
15*a*.	" (placed) 3,000 sq. yds. at.....	0	40	.....	1200	00
16.	Brickwork (del.) 112 M. at.....	15	00	.....	1680	00
16*a*.	" (placed) 112 M. at.....	20	00	.....	2240	00

17.	Hollow tile 6″ (del.) 9,563 each at	0	15	.....	1434	45
17a.	" " 6″ (placed) 9,563 each at	0	12	.....	1147	56
18.	" " 8″ (del.) 432 each at	0	18	.....	77	76
18a.	" " 8″ (placed) 432 each at	0	14	.....	60	48
19.	Structural steel (del.) 29 tons at	150	00	.....	4350	00
19a.	" " (placed) 29 tons at	20	00	.....	580	00
	Total forwarded				$141118	30
	Brought forward				141118	30
20.	Roofing (del.) 197 sqs. at	5	00	.....	985	00
20a.	" (placed) 197 sqs. at	5	50	.....	492	50
21.	Drain boxes (del.) 7 each at	27	00	.....	189	00
21a.	" " (placed) 7 each at	5	00	.....	35	00
22.	Gutters (del.) 490 L. Ft. at	0	30	.....	147	00
22a.	" (placed) 490 L. Ft. at	0	15	.....	73	50
23.	Skylights, marquise (del.) 1,490 sq. ft. at	1	00	.....	1490	00
23a.	" (placed) 625 sq. ft. at	0	25	.....	156	25
24.	Metal doors covered (del.) 1,583 sq. ft. at	1	00	.....	1583	00
24a.	" " " (placed) 1,583 sq. ft. at	0	40	.....	683	20
25.	Kalamein doors (del.) 140 sq. ft at	2	00	.....	280	00
25a.	Kalamein doors (placed) 140 sq. ft. at	0	50	.....	70	00
26.	Doors, lifting & rolling (del.) 2,450 at	1	80	.....	4410	00
27.	Steel sash (del.) 8,454 at	0	50	.....	4227	00
27a.	" " (placed) 7,554 at	0	25	.....	1888	50
28.	Plumbing fixtures (del.) 17 each at	75	00	.....	1275	00
28a.	" " (placed) 16 each at	40	00	.....	640	00
29.	" pipes (del.) 4,615 L. Ft. at	0	50	.....	2307	50
29a.	" " (placed) 4,550 L. ft. at	0	50	.....	2275	00
30.	Heating radiators (del.) 10 each at	50	00	.....	500	00

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
31.	Heating Pipes (del.) 800 L. Ft. at	0	60	.....	480	00
31*a*.	" " (placed) 600 L. Ft. at	0	40	.....	240	00
33.	Roof drainage pipes (del.) 488 L. Ft. at	1	50	.....	732	00
33*a*.	" " pipes (placed) 488 L. Ft. at	0	50	.....	244	00
34.	Electrical work (del.) 309 outlets at	15	00	.....	4635	00
34*a*.	" " (placed) 185 outlets at	5	00	.....	925	00
35.	Painting (del.) 2,000 sq. ft. at	0	03	.....	60	00
35*a*.	" (placed) 2,000 sq. ft. at	0	03	.....	60	00
36.	Wood flooring (del.) 4,500 F. B. M. at	80	00	.....	360	00
36*a*.	" " (placed) 3,000 F. B. M. at	45	00	.....	135	00
37.	Spiral conveyor (del.) 100% at	600	00	.....	1600	00
37*a*.	" " (placed) 100% at	100	00	.....	100	00
38.	Elevators (del.) 3 at	7033	33	.....	21100	00
38*a*.	" (placed) 3, 90% of each at	300	00	.....	810	00
	Total forwarded				196256	75
	Forward				196256	75
39.	Safety treads (del.) 184 each at	2	25	.....	414	00
39*a*.	" " (placed) 184 each at	0	75	.....	138	00
40.	Stair railing (del.) 350 L. Ft	0	50	.....	175	00
40*a*.	" " (placed) 350 L. Ft. at	0	50	.....	175	00
41.	Hardware (del.) all at	1000	00	.....	1000	00
41*a*.	" (placed) 75% at	100	00	.....	75	00

42.	Pumping (del.) 60 days	3	00	.....	180	00
43.	Backfill (placed) 1,000 cu. yds at	1	00	.....	1000	00
44.	Copper Counter flashing (del.) 1,400 No. at	0	40	.....	560	00
44*a*.	Copper Counter flashing (placed) 1,200 No. at	0	25	.....	300	00
	Change "A":					
	(*a*) Design, pay freight and place 13½ tons reinforcing steel	472	50			
	Change "B":					
	(*a*) Provide additional office rooms on second floor	2969	83			
	(*b*) Raise elevation of basement floor footings 6″; reinforce same changing mix	589	00			
	Total changes "A" and "B"				4031	33
	Total carried forward				204305	08
	Total				$204305	08
	Brought forward				204305	08
	Change "C":					
	(*a*) Install additional radiators in office space provided by change "B"	200	00			
	(*b*) Install additional lights and wall receptacles	200	00			
	(*c*) Raise pile cut-off and bottom of footings B-11 and C-11 2′ 2″	914	45	CR.		
	(*d*) Substitute 1½″ hose, hose valves and hose racks for 2½″; lay 6″ iron water main along side of building	185	45	CR.		

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
	Change "D":					
	(*a*) Install toilets on 1st, 3rd and 4th floors of General Storehouse in accordance with sketches H4-46 and H4-47 and raise pile cut-off in bottom of footings of B-3 and B-4, constructing same in accordance with Yard Plan H4-48.....	4700	00			
	Total changes "C" and "D".....				4823	10
	Total gross estimate.....				209128	18
	Less previous gross estimate.....				199867	23
	Gross amount of this voucher.....				9260	95
	Less 10% reservation.....				926	10
80	Balance				8334	85
	For 223 bbls. cement at $2.48.....				552	04
	Net amount this voucher.....				7782	81
	Total				$7782	81

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.
*(Not to be signed in duplicate.)
$7,782.81 ——— ———,

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.
I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....
Differences as follows:.....
.....
....

Approved for $.....

A. H. BOND,
Lieutenant C. E. C., U. S. N.,
Acting Public Works Officer.

——— ———,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated ——— —, 19—, on ——— ——— in favor of ———, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.
†Fill in from 1 to 4 as appropriate.
‡Fill in from A to C as appropriate.

81 Department No. 866.
Voucher No. 10.
Contract No. 2469.
Date, Oct. 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L W R J Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service September, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00

3.	Concrete 1:2½:5 (del.) 1,227 at	6	00	.....	7362	00
3a.	" 1:2½:5 (pla.) 1,227 at	3	00	.....	3681	00
4.	" 1:2:4 (del.) 3,360 at	6	50	.....	21840	00
4a.	" 1:2:4 (placed) 3,360 at	3	00	.....	10080	00
5.	" 1:1½:3 (del.) 366 at	7	00	.....	2562	00
5a.	" 1:½:3 (placed) 374 at	3	00	.....	1098	00
6.	" 1:10 (del.) 350 at	2	50	.....	875	00
6a.	" 1:10 (placed) 350 at	3	00	.....	1050	00
7.	Forms (del.) 364 F. B. M. at	30	00	.....	10920	00
7a.	" (placed) 364 F. B. M. at	34	00	.....	12376	00
8.	" interior (del.) 150 at	10	00	.....	1500	00
8a.	" interior (placed) 150) at	5	00	.....	750	00
9.	Reinforcing steel (del.) m275 sq. ft. at	67	00	.....	18425	00
9a.	" " (placed) 275 sq. ft. at	23	50	.....	6462	50
10.	Cement floor 6" (del.) 19,200 at	0	13	.....	2496	00
10a.	" " 6" (placed) 19,200 at	0	10	.....	1920	00
11.	" topping (del.) 72,000 at	0	06	.....	4320	00
11a.	" " (placed) 72,000 at	0	025	.....	1800	00
12.	" " ½" (del.) 19,200 at	0	02	.....	384	00
12a.	" " ½" (placed) 19,200 at	0	01	.....	192	00
13	" steps (del.) 656 at	0	05	.....	32	80
13a.	" " (placed 656 at	0	10	.....	65	60
14.	Hydrated Lime (del.) 18,715 at	0	01	.....	187	15
15.	Plastering (del.) 2,500 at	0	10	.....	250	00
16.	Brick work (del.) 112 at	15	00	.....	1680	00
16a.	" (placed) 98 at	20	00	.....	1960	00
17.	Hollow tile 6" (del.) 9,563 at	0	15	.....	1434	45
17a.	" " 6" (placed) 8,563 at	0	12	.....	1027	56
18.	" " 8" (del.) 432 at	0	18	.....	77	76
18a.	" " 8" (placed) 432 at	0	14	.....	60	48

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
19.	Structural steel (del) 29 tons at	150	00	.....	4350	00
19*a*.	" " (placed) 28 tons at	20	00	.....	560	00
	Total Carried forward				$138971	30
	Brought forward				$138971	30
20.	Roofing (del.) 125 sqs. at	5	00	.....	625	00
20*a*.	" (placed) 67 sqs. at	2	50	.....	167	50
21.	Drain Boxes (del.) 7 at	27	00	.....	189	00
21*a*.	" " (placed) 7 at	5	00	.....	35	00
22.	Gutters (del.) at	0	30	.....	147	00
23.	Skylights, Marquise, (del.) 4,640 at	1	00	.....	4640	00
23*a*.	" " (placed) 300 at	0	25	.....	75	00
24.	Doors, Metal covered (del.) 1,583 at	1	00	.....	1583	00
24*a*.	" " " (placed) 200 at	0	40	.....	80	00
25.	Kalamein Doors (del.) 140 at	2	00	.....	280	00
26.	Doors, lifting & Rolling (Del.) 2,450 at	1	80	.....	4410	00
27.	Steel sash (del.) 8,454 at	0	50	.....	4227	00
27*a*.	" " placed 2,000 at	0	25	.....	500	00
28.	Plumbing fixtures (del.) 17 each at	75	00	.....	1275	00
28*a*.	" " (placed) 5 at	40	00	.....	200	00
29.	" pipes (del.) 4,615 at	0	50	.....	2307	50
29*a*	" " (placed) 4,450 at	0	50	.....	2225	00
30.	Heating Radiators (del.) 10 at	50	00	.....	500	00

31.	Heating Pipes (del.) 800 at	0	60	.....	480	00
31a.	" " (placed) 600 at	0	40	.....	240	00
33.	Roof Drainage Pipes (del.) 488 at	1	50	.....	732	00
33a.	" " " (placed) 488 at	0	50	.....	244	00
34.	Electrical work (del.) 309 at	15	00	.....	4635	00
34a.	" " (placed) 159 at	5	00	.....	795	00
36.	Wood flooring (del.) 2,000 at	80	00	.....	160	00

37.	Spiral conveyor (del.) 90%	1600	00	.....	1440	00
37a.	" " (placed) 75% at	100	00	.....	75	00
38.	Elevators (del.) 3 at	7033	00	.....	21100	00
38a.	" (placed) 3, 75% of each at	300	00	.....	675	00
39.	Safety treads (del.) 184 at	2	25	.....	414	00
39a.	" " (placed) 184 each at	0	75	.....	138	00
40.	Stair railing (del.) 300 at	0	50	.....	150	00
40a.	" " (placed) 200 at	0	50	.....	87	50
	Carried forward				$193802	80
	Brought forward				193802	80
41.	Hardware (del.) all at	....	...	.....	1000	00
42.	Pumping (del.) 60 days at	3	00	.....	180	00
43.	Backfill (placed) 850 at	1	00	.....	850	00
44.	Copper Counter Flashing (del.) 1,400 at	0	40	.....	560	00
44a.	" " " (placed) 200 at	0	25	.....	50	00
	Total				$196442	80

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
	Change "A":					
	(*a*) Design, pay freight and place 13½ tons reinforcing steel	$472	50			
	Change "B":					
	(*a*) Provide additional office rooms on second floor	2269	83			
	(*b*) Raise elevation of basement floor footings 6″; reinforce same changing mix	589	00			
	Change "C":					
	(*a*) Install additional radiators in office space provided by change "B"	200	00			
	(*b*) Install additional lights and wall receptacles	170	00			
	(*c*) Raise pile cut-off and bottom of footings B-11 and C-11 2′ 2″	91	45	CR.		
	(*d*) Substitute 1½″ hose, hose valves and hose racks for 2½″; lay 6″ cast iron water main along side of building etc.	185	45	CR.		
	Total changes				$3424	43
	Total gross estimate				$199867	23
	Total carried forward				$199867	23

Total Gross estimate (forw'd)		$199867	23
Less previous gross estimate		195108	41
Gross amount of this voucher		$4758	82
Less 10% Reservation		475	88
Balance		4282	94
For 343½ bbls. cement at $2.62 furnished by the Government.	$899.97		
Credit for 230 bbls. cement charged twice on voucher for July, at $2.18, CR.	$501.40		
	$398.57		
Total for Cement furnished by Government		$398	57
Net amount of this voucher		$3884	37
"Liquidated damages, if any, will be deducted from final voucher."			
Total		$3884	37

83 (Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

Voucher for Purchases and Services Other Than Personal.—Continued.

*(Not to be signed in duplicate.) —— ——, —— ——.
$3,884.37.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate. I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....
Differences as follows:.....
.....
....

Approved for $.....

N. M. SMITH,
Lt. Comd'r, C. E. C., U. S. N.,
Acting Public Works Officer.

—— ——,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

Voucher No. 9.
Contract No. 2469.
Date, Sept. 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-WRJ Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service August 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00
3.	Concrete 1:2½:5 (del.) 1,227 at.....	6	00	.....	7362	00
3*a*.	" 1:2½:5 (placed) 1,227 at.....	3	00	.....	3681	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
4.	Concrete 1:2:4 (del.) 3,345 at.....	6	50	.....	21742	50
4*a*.	" 1:2:4 (placed) 3,345 at.....	3	00	.....	10035	00
5.	" 1:1½:3 (del.) 366 at.....	7	00	.....	2562	00
5*a*.	" 1:1½:3 (placed) 366 at.....	3	00	.....	1098	00
6.	" 1:10 (del.) 350 at.....	2	50	.....	875	00
6*a*.	" 1:10 (placed) 350 at.....	3	00	.....	1050	00
7.	Forms (del.) 364 F. B. M. at.....	30	00	.....	10920	00
7*a*.	" (placed) 363 F. B. M. at.....	34	00	.....	12342	00
8.	Forms interior (del.) 150 at.....	10	00	.....	1500	00
8*a*.	" " (placed) 150 at.....	5	00	.....	750	00
9.	Reinforcing steel (del.) 275 sq. ft at.....	67	00	.....	18425	00
9*a*.	" " (placed) 274 sq. ft. at.....	23	50	.....	6439	00
10.	Cement floor 6" (del.) 19,200— at.....	0	13	.....	2496	00
10*a*.	Cement floor 6" (placed) 19,200 at.....	0	10	.....	1920	00
11.	Cement topping, ¾" (del.) 72,000 at.....	0	06	.....	4320	00
11*a*.	" " ¾" (placed) 72,000 at.....	0	025	.....	1800	00
12.	" " ½" (del.) 19,200 at.....	0	02	.....	384	00
12*a*.	" " ½" (placed) 19,200 at.....	0	01	.....	192	00
13.	Cement steps (del.) 656 at.....	0	05	.....	32	80
13*a*.	" " (placed) 656 at.....	0	10	.....	65	60
14.	Hydrated lime (del.) 14,715 at.....	0	01	.....	147	15
15.	Plastering (del.) 500 sq. yds. at.....	0	10	.....	50	00
16.	Brickwork (del.) 100 at.....	15	00	.....	1500	00
16*a*.	" (placed) 75 M. at.....	20	00	.....	1500	00
17.	Hollow tiles 6" (del.) 9,500 at.....	0	15	.....	1425	00

17a.	Hollow tiles 6" (placed) 1,000 at	0	12	.....	120	00
18.	" " 8" (del.) 432 at	0	18	.....	77	76
19.	Structural steel (del.) 29 tons at	150	00	.....	4350	00
19a.	" " (placed) 22 tons at	20	00	.....	440	00
20.	Roofing (del.) 125 sqs. at	5	00	.....	625	00
	Total				137418	81
	Brought forward				137418	81
22.	Gutter (del.) 490 at	0	30	.....	147	00
23.	Skylights, marquise (del.) 4,640 at	1	00	.....	4640	00
24.	Doors, metal covered (del.) 1,583 at	1	00	.....	1583	00
25.	Doors, Kalamain (del.) 140 at	2	00	.....	280	00
26.	Doors, lifting & rolling (del.) 2,450 at	1	80	.....	4410	00
27.	Steel sash (del.) 8,454 at	0	50	.....	4227	00
28.	Plumbing fixtures (del.) 17 at	75	00	.....	1275	00
29.	" pipes (del.) 4,615 at	0	50	.....	2307	50
29a.	" pipes (placed) 4,450 at	0	50	.....	2225	00
30.	Heating radiators (del.) 10 at	50	00	.....	500	00
31.	Heating Pipes (del.) 800 at	0	60	.....	480	00
31a.	" " (placed) 600 at	0	40	.....	240	00
33.	Roof drainage pipes (del.) 488 at	1	50	.....	732	00
33a.	" " " (placed) 488 at	0	50	.....	244	00
34.	Electrical Work (del.) 309 outlets at	15	00	.....	4635	00
34a.	" " (placed) 159 outlets at	5	00	.....	795	00
37.	Spiral Conveyor (del.) .75 at	1600	00	.....	1200	00
38.	Elevators (del.) 3 at	7033	33	.....	21100	00
38a.	" (placed) .45 at	300	00	.....	135	00
39	Safety threads (del.) 184 at	2	25	.....	414	00
39a.	" " (placed) 184 at	0	75	.....	138	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
40	Stair Railing (del.) 300 at	0	50	.....	150	00
40a.	" " (placed) 175 at	0	50	.....	87	50
41.	Hardware (del.) all	....	..	.....	1000	00
42.	Pumping (del.) 60 days	3	00	.....	180	00
43.	Backfill (placed) 850 at	1	00	.....	850	00
44.	Copper counter flashing (del.) 1,400 at	0	40	.....	560	00
	Total Carried Forward				$191953	81
85	Brought forward				191953	81
	Change "A":					
	(a) Design—pay freight and place 13½ tons reinforcing steel	$472	50			
	Change "B":					
	(a) Provide additional office rooms on second floor	2000	00			
	(b) Raise elevation of basement floor footings 6"; reinforce same, changing mix	589	00			
	Change "C":					
	(a) Install additional radiators in office space provided by change "B"	200	00			
	(b) Install additional lights and wall receptacles	170	00			

(c) Raise pile cut-off and bottom of footings B-11 and C-11 2′ 2″	91	45	CR.		
(d) Substitute 1½″ hose, hose valves and hose racks for 2½″; lay 6″ cast iron water main alongside of building, etc.	185	45	CR.		
Total changes				3154	60
Total gross estimate				195108	41
Less previous gross estimate				189021	10
Gross amount this voucher				6087	31
Less 10% reservation				608	73
Balance forwarded				5478	58
Balance brought forward				$5478	58
For 767¾ bbls. Cement at $2.18 furnished by the Government				1673	70
Net amount this voucher				3804	88
"Liquidated damages, if any, will be deducted from final voucher."					
Total				3804	88

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

Voucher for Purchases and Services Other Than Personal.—Continued.

*(Not to be signed in duplicate.) ——— ———, ——— ———.

$3,804.88.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

NORMAN M. SMITH,
Civil Engineer, U. S. N.,
Public Works Officer.

——— ———,
Chief of Bureau Yards and Docks.

Paid by Check No. 49661, dated Sept. 23, 1919, on Treas. U. S., in favor of The Principal for $3,804.88.

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*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

Department No. 866.
Voucher No. 8.
Contract No. 2469.
Date, August 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-J Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service July, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles (del.) 1,206 at.....	2	00	.....	2412	00
2*a*.	" (placed) 1,206 at.....	5	00	.....	6030	00

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
3.	Concrete 1:2½:5 (del.) 1,227 at	6	00	.....	7362	00
3*a*.	" 1:2½:5 (pla.) 1,227 at	3	00	.....	3681	00
4.	" 1:2:4 (del.) 3,300 at	6	50	.....	21450	00
4*a*.	" 1:2:4 (placed) 3,300 at	3	00	.....	9900	00
5.	" 1:1½:3 (del.) 366 at	7	00	.....	2562	00
5*a*.	" 1:1½:3 (placed) 366 at	3	00	.....	1098	00
6.	" 1:10 (del.) 350 at	2	50	.....	875	00
7.	Forms (del.) 364 M. F. B. M. at	30	00	.....	10920	00
7*a*.	" (placed) 363 M. F. B. M. at	34	00	.....	12342	00
8.	" interior (del.) 150 M. F. B. M. at	10	00	.....	1500	00
8*a*.	" " (placed) 150 M. F. B. M. at	5	00	.....	750	00
9.	Reinforcing steel (del.) 275 sq. ft. at	67	00	.....	18425	00
9*a*.	" " (placed) 274 sq. ft. at	23	50	.....	6439	00
10.	Cement floor 6" (del.) 19,200 at	0	13	.....	2496	00
10*a*.	" " 6" (placed) 19,200 at	0	10	.....	1920	00
11.	Cement topping, ¾" (del.) 72,000 at	0	06	.....	4320	00
11*a*.	" " ¾" (placed) 72,000 at	0	025	.....	1800	00
12.	" " ½" (del.) 19,200 at	0	02	.....	384	00
12*a*.	Cement topping ½" (placed) 19,200 at	0	01	.....	192	00
13.	Cement steps (del.) 525 at	0	05	.....	26	25
13*a*.	" " (placed) 525 at	0	10	.....	52	50
14.	Hydrated lime (del.) 8,000 at	0	01	.....	80	00
16.	Brickwork (del.) 100 at	15	00	.....	1500	00
16*a*.	" (placed) 34 at	20	00	.....	680	00
19.	Structural steel (del.) 29 tons at	150	00	.....	4350	00
19*a*.	" " (placed) 22 tons at	20	00	.....	440	00

21.	Drain boxes (del.)						
22.	Gutter (del.) 490 at	0	30	.....	147	00	
23.	Skylights, marquise (del.) 4,640 at	1	00	.....	4640	00	
24.	Doors, metal covered (del.) 1,583 at	1	00	.....	1583	00	
25.	Doors, kalamein (del.) 140 sq. ft. at	2	00	.....	280	00	
26.	Doors, lifting & rolling (del.) 2,450 at	1	80	.....	4410	00	
	Carried forward				143796	75	
27.	Steel sash (del.) 8,454 sq. ft. at	0	50	.....	4227	00	
28.	Plumbing fixtures (del.) 17 at	75	00	.....	1275	00	
29.	" pipes (del.) 4,615 at	0	50	.....	2307	50	
29*a*.	" " (placed) 4,000 at	0	50	.....	2000	00	
30.	Heating radiators (del.) 10 at	50	00	.....	500	00	
31.	" pipes (del.) 800 at	0	60	.....	480	00	
31*a*.	" " (placed) 600 at	0	40	.....	240	00	
33.	Roof drainage pipes (del.) 488 at	1	50	.....	732	00	
33*a*.	" " " (placed) 408 at	0	50	.....	204	00	
34.	Electrical Work (del.) 309 outlets at	15	00	.....	4635	00	
34*a*.	" " (placed) 150 outlets at	5	00	.....	750	00	
37.	Spiral Conveyor (del.) .75 at	1600	00	.....	1200	00	
38.	Elevators (del.) 3 at	7033	33	.....	21100	00	
39.	Safety treads (del.) 184 at	2	25	.....	414	00	
39*a*.	" " (placed) 167 at	0	75	.....	125	23	
41.	Hardware (del.) all at	....	..	.....	1000	00	
42.	Pumping (del.) 60 days	3	00	.....	180	00	
43.	Backfill (placed) 750 cu. yds. at	1	00	.....	750	00	
44.	Copper Counter flashing (del.) 1,400 at	0	40	.....	560	00	
	Total				186476	50	

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
87	Brought forward				186476	50
	Change "A":					
	(*a*) 13½ tons reinforcing steel delivered...	$472.50				
	Change "B":					
	(*a*) Providing additional office room on 2nd floor	1500.00				
	(*b*) Raise elevation of basement floor footing 6"; reinforce same, changing mix.	589.00				
	Change "C":					
	(*a*) Install additional radiators in office space provided by Change "B"	140.00				
	(*b*) Install additional lights and wall receptls.	120.00				
	(*c*) Raise pile-cut-off and bottom of footings B-11 and C-11 2' 2"	91.45	CR.			
	(*d*) Substitute 1½" hose, hose valves, and hose racks for 2½"; lay 6" cast iron water main along side of building, etc.	185.45	CR.			
	Total changes				2544	60
	Total gross estimate				189021	10

Total gross estimate		*189021*	*10*
Less previous gross estimate		148170	56
Gross amount this voucher		40850	54
Less 10% reservation		4085	05
Balance		36765	49
For 5,734 bbls. cement at $2.18 furnished by the Government	$12500.12		
17,100 cement sacks returned at $.10	1710.00		
	$10790.12		
Less		10790	12
Net amount this voucher		25975	37
"Liquidated damages, if any, will be deducted from final voucher."			
Total		$25975	37

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

Voucher for Purchases and Services Other Than Personal.—Continued.

*(Not to be signed in duplicate.) ——— ———,
———— ———.
$25,975.97.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service; that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

NORMAN M. SMITH,
Civil Engineer, U. S. N., Public Works Officer.

———— ————,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

Department No. 866.
Voucher No. 7.
Contract No. 2469.
Date, July 8, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
L-J Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service June, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation, 8,750 cu. yds. placed at.....	1	00	.....	8750	00
2.	Piles, 1,206 del. at.....	2	00	.....	2412	00
2*a*.	Piles, 1,206 placed at.....	5	00	.....	6030	00
3.	Concrete 1:2-½:5, 1,182.80 del. at.....	6	00	.....	7096	00
3*a*.	Concrete 1:2-½:5, 1,182.80 placed at.....	3	00	.....	3548	40
4.	Concrete 1:2:4, 2,295.7 del. at.....	6	50	.....	14922	05
4*a*.	Concrete 1:2:4, 2,295.7 placed at	3	00	.....	6887	10

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
5.	Concrete 1:1-½:3, 291.2 del. at	7	00	.....	2038	40
5*a*.	Concrete 1:1-½:3, 291.2 placed at	3	00	.....	873	60
7.	Forms Lumber, 232.08 M F. B. M. del. at	30	00	.....	6962	40
7*a*.	Forms Lumber, 280.0 M F. B. M. placed at	34	00	.....	9520	00
8.	Forms interior, 96.0 M F. B. M. del. at	10	00	.....	960	00
8*a*.	Forms interior, 96.0 M F. B. M. placed at	5	00	.....	480	00
9.	Reinforcing steel 235,604 sq. ft. del. at	67	00	.....	17125	47
9*a*.	Reinforcing steel 160,674 sq. ft. placed	23	50	.....	3775	84
10.	Cement Floor, 19,200 del. at	0	13	.....	2496	00
10*a*.	Cement Floor, 19,200 placed at	0	10	.....	1920	00
11.	Cement topping, 54,00 sq. ft. del. at	0	06	.....	3240	00
11*a*.	Cement topping, 54,000 sq. ft. placed	00	25	.....	1350	00
12.	Cement topping, 9,600 sq. ft. del. at	0	02	.....	192	00
16.	Brick work 13.0 del. at	15	00	.....	195	00
19.	Structural Steel, 29 tons del. at	150	00	.....	4350	00
24.	Doors, metal covered, 1,583 sq. ft. del	1	00	.....	1583	00
25.	Doors, Kalamein, 140 sq. ft. del. at	2	00	.....	280	00
26.	Doors, lifting & rolling, 2,450 sq. ft. del	1	80	.....	4410	00
27.	Steel Sash, 8,454 sq. ft. del. at	0	50	.....	4227	00
29.	Plumbing Pipes, 4,500 del. at	0	50	.....	2250	00
29*a*.	Plumbing Pipes, 260 placed at	0	50	.....	130	00
33.	Roof Drainage Pipes, 480 del. at	1	50	.....	720	00
33*a*.	Roof Drainage Pipes, 370 placed at	0	50	.....	185	00
34.	Elec. Work, 306 outlets, del. at	15	00	.....	4590	00

34a.	Elec. work, 25 outlets, placed at	5	00	.....	125	00
38.	Elevators, 3 del. at	7033	33	.....	21100	00
	Brought forward				144725	06
39.	Safety treads, 184 del. at	2	25	.....	414	00
42.	Pumping 60 days, del. at	3	00	.....	180	00
43.	Backfill, 700 cu. yds. at	1	00	.....	700	00
	Change "A":					
	(a) 13½ tons reinforcing steel delivered	352	50	.....	352	50
	Change "B":					
	(a) Move lavatory chute and east elevator one bay to the west, providing additional office rooms on second floor	1228	00	.....	1228	00
	(b) Raise elevation of basement floor column footings and pile cut off 6"; reinforce basement floor with ⅜" bars; 18" centers lengthwise and crosswise; 1:2-½:5 to 1:2:4	571	00	.....	571	00
	Total Gross Estimate				148170	56
	Less Previous Gross Estimate				110109	17
	Gross Amount This Voucher				38061	39
	Less 10% Reservation				3806	14
	Balance				34255	25
	4,800 cement sacks ret. at 10c				480	00
	Net amount this voucher				34735	25

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
	"Liquidated damages if any will be deducted from final voucher."					
	Total				$34735	25

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

——— ———,

*(Not to be signed in duplicate.)

———— ———.

$34,735.25.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $34,735.25

N. M. SMITH,
Civil Engineer, U. S. N.,
Acting Public Works Officer.

——— ———,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated ——— —, 19—, on ——— ——— in favor of ———, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

Department No. 866.
Voucher No. 7.
Contract No. 2469.
Date, June 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service May, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address 629 Woodward Bldg., Washington, D. C.

Item.	Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
Brought forward				109185	67
Change "A":					
(*a*) 13½ tons reinforcing steel (delivered)	352	50	.....		

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.	Unit price. Dolls.	Cts.	Per—	Amount Dollars.	Cts.
Change "B":					
(*b*) Raise elevation of basement floor column footings and pile cutoff 6"; reinforce basement floor with ⅜" bars; 18" centers lengthwise and crosswise; 1:2-½:5 to 1:2:4	571	00	.....	923	50
Total gross estimate				110109	17
Less previous gross estimate				88209	15
Gross amount this voucher				21900	02
Less 10% reservation				2190	00
Balance				19710	02
5,550 cement sacks at 10 cts. (returned)				555	00
Net amount this voucher				20265	02
"Liquidated damages, if any, will be deducted from final voucher."					
Total				20265	02

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.) ——— ———,
$20,265.02. ——— ———.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....
Differences as follows:.....
.....
....

Approved for $.....

N. M. SMITH,
Civil Engineer, U. S. N.,
Public Works Officer.

———— ————,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of —— for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation, 8,750 cu. yds. (placed) at.....	1	00	.....	8750	00
2.	Piles, 1,206 (del.) at.....	2	00	.....	2412	00
2*a*.	Piles, 1,206 (placed) at.....	5	00	.....	6030	00
3.	Concrete, 1:2-½:5, 1,182.80 (del.) at.....	6	00	.....	7096	80
3*a*.	Concrete, 1:2-½:5, 1,182.80 (placed).....	3	00	.....	3548	40
4.	Concrete, 1:2:4, 522.7 (del.) at.....	6	50	.....	3397	55
4*a*.	Concrete, 1:2:4, 522.7 (placed)at.....	3	00	.....	1568	10
5.	Concrete, 1:1-½:3, 54.2 (del.) at.....	7	00	.....	379	40
5*a*.	Concrete, 1:1-½:3, 54.2 (placed) at.....	3	00	.....	162	60
7.	Forms lumber, 232.08 M F. B. M. (del.) at.....	30	00	.....	6962	40
7*a*.	Forms lumber, 113.0 M F. B. M. (placed) at.....	34	00	.....	3842	00
8.	Forms interior, 30.0 M F. B. M. (del.) at.....	10	00	.....	300	00
8*a*.	Forms interior, 20.0 M F. B. M. (placed)at.....	5	00	.....	100	00
9.	Reinforcing steel, 250,674 sq. ft. (del.).....	67	00	.....	16795	16
9*a*.	Reinforcing steel 45,114 sq. ft. (placed).....	23	50	.....	1060	18
10.	Cement floor, 15,559 del. at.....		13	.....	2022	67
10*a*.	Cement floor, 15,559 (placed) at.....		10	.....	1555	90
11.	Cement topping, 15,937 sq. ft. (del.).....		06	.....	956	22
11*a*.	Cement topping, 11,812 sq. ft. (placed) at.....		025	.....	295	29
12.	Cement topping, 9,600 sq. ft. del.) at.....		02	.....	192	00
19.	Structural steel, 29 tons (del.) at.....	150	00	.....	4350	00
24.	Doors, metal covered, 1,583 sq. ft. (del.).....	1	00	.....	1583	00
25.	Doors, Kalamein, 140 sq. ft. (del.).....	2	00	.....	280	00
26.	Doors, lifting & rollings, 2,450 sq. ft. (del.).....	1	80	.....	4410	00

27.	Steel sash, 8,454 sq. ft. (del.) at.....		50	.....	4227	00
34.	Elec. work, 306 outlets (del.) at.....	15	00	.....	4590	00
34*a*.	" work, 15 outlets (placed) at.....	5	00	.....	75	00
38.	Elevators, 3 (del.) at.....	7033	33	.....	21100	00
39.	Safety treads, 184 (del.) at.....	2	25	....	414	00
42.	Pumping, 60 days (placed) at.....	3	00	.....	180	00
43.	Backfill, 550 cu. yds. (placed) at.....	1	00	.....	550	00

8—855

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.)

——— ———,

$—. ——— ———.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

——— ———,

Chief of Bureau Yards and Docks.

Paid by Check No. —, dated ——— —, 19—, on ——— ——— in favor of ———, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

92 Department No. 865.
Voucher No. 6.
Contract No. 2469.
Date, M[illegible], 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Appropriation: ——.
Subhead: —.
Date of Delivery or Service May, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount Dollars.	Cts.
1.	Excavation, 8,700 cu. yds. (placed)	1	00	.....	8750	00
2.	Piles, 1,171, delivered	2	00	.....	2342	
2*a*.	Piles, 1,059 placed	5	00	.....	5295	
3.	Concrete, 1:2½:5 869.36 delivered	6	00	.....	5216	16
3*a*.	Concrete, 1:2½:5 869.36 placed	3	00	.....	2608	08
4.	Concrete, 1:2:4 223.20 delivered	6	50	.....	1450	80

4*a*.	Concrete, 1:2:4 223.20 placed	3	00	.....	669	60
5.	Concrete, 1:1½:3 23.7 delivered	7	00	.....	165	90
5*a*.	Concrete 1:1½:3 23.7 placed	3	00	.....	71	10
7.	Form lumber, 220-39 M. F. B. M. delivered	30	00	.....	6611	70
7*a*.	Form lumber, 15. M. F. B. M. placed	34	00	.....	510	
8.	Forms interior columns 30 delivered	10	00	.....	300	00
8*a*.	Forms interior columns 12 placed	5	00	.....	60	
9.	Reinforcing steel 250,674 tons delivered	67	00	.....	16795	16
9*a*.	Reinforcing steel 24,695 " placed	23	50	.....	580	33
10.	Cement floor 6" 8,359 delivered		13	.....	1086	67
10*a*.	Cement floor, 6" 8,359 placed		10	.....	835	90
11.	Cement topping ¾" 15,937 del.		06	.....	956	22
11*a*.	Cement topping, ¾" 3,937 placed		025	.....	98	42
12.	Cement topping, ½" 9,600 del.		02	.....	192	00
24.	Doors, metal covered 1,583 sq. ft. del.	1	00	.....	1583	00
25.	Doors, Kalemin 140 sq. ft. del.	2	00	.....	280	00
27.	Steel Sash 8,454 sq. ft. del.		50	.....	4227	00
34.	Electrical work 306 outlets del.	15	00	.....	4590	00
34*a*.	Electrical work 10 outlets placed	5	00	.....	50	00
38.	Elevators, 3 delivered	7033	33	.....	21100	00
39.	Safety treads 184 del.	2	25	.....	414	
42.	Pumping, 59 days, placed	3	00	.....	177	
43.	Backfill, 467 cu. yds. placed	1	00	.....	467	
	Total				87433	04
	Brought forward				87433	04
	Change A:					
	(*a*) 13½ tons reinforcing steel delivered	359	50			

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.	Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
Change B:					
(*b*) Raise elevation of basement floor column footings and pile cut off 6″; reinforce basement floor with ⅜″ bars; 18″ centers lengthwise and crosswise: Change mix of concrete from 1:2½:5 to 1:2:4	423	61	.....	776	11
				88209	15
Gross				83739	32
Less previous gross				4469	83
Gross this voucher				446	98
Less 10% reservation				4022	85
Balance				85	..
850 cement sacks at .10				4107	85

93

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been made.

*(Not to be signed in duplicate.)

___ ___, ___ ___.

$.....

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service; that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

. ...

Approved for $4,107.85

——— ———,

Chief of Bureau Yards and Docks.

Paid by Check No. 29118, dated Mch. 20, 1918, on ——— ——— in favor of ——— ———, for $1,498.31.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

94 Department No. 866.
Voucher No. 5
Contract No. 2469.
Date, April 1, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service April, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price			Amount.	
		Dolls.	Cts.	Per—	Dollars.	Cts.
1.	Excavation 8,650 cu. yds. (placed) at.....	1	00	.....	8650	00
2.	Piles 975 (del.) at.....	2	00	.....	1950	00
2*a*.	" 802 (placed) at.....	5	00	.....	4010	00
3.	Concrete 1:2½:5 697.54 cu. yds. (del.) at.....	6	00	.....	4185	24

3a.	" 1:2½:5 697.54 " (placed) at	3	00	.....	2092	62
4.	" 1:2:4 139.2 cu. yds. (del.) at	6	50	.....	904	80
4a.	" 1:2:4 139.2 " (placed) at	3	00	.....	417	60
5.	" 1:1½:3 21.7 cu. yds. (del.) at	7	00	.....	151	90
5a.	" 1:1½:3 21.7 " (placed) at	3	00	.....	65	10
7.	Form lumber 215.25 M. F. B. M. (del.) at	30	00	.....	6457	50
7a.	" " 15.0 M. F. B. M. (placed) at	34	00	.....	510	00
8.	Forms interior columns 30 (del.) at	10	00	.....	300	00
8a.	" " " 12 (placed) at	5	00	.....	60	00
9.	Reinforcing steel 250.674 tons (del.) at	67	00	.....	16795	16
9a.	" " 24,695 tons (pla.) at	23	50	.....	580	33
10.	Cement floor 6", 8,359 sq. ft. (del.) at	0	13	.....	1086	67
10a.	" " 6" 8,389 " (placed) at	0	13	.....	1086	67
11.	Cement topping ¾", 13,687 sq. ft. (del.) at	0	06	.....	821	22
11a.	Cement topping ¾", 1,687 sq. ft. (pla.) at	0	025	.....	25	17
12.	Cement topping ½", 9,600 sq. ft. (del.) at	0	02	.....	192	00
24.	Doors, metal covered 1,583 sq. ft. (del.) at	1	00	.....	1583	00
25.	Doors Kalamein 140 sq. ft. (del.) at	2	00	.....	280	00
27.	Steel sash 8,454 sq. ft. (del.) at	0	50	.....	4227	00
34.	Electrical work 306 outlets (del.) at	15	00	.....	4590	00
34a.	" " 10 outlets (plac.) at	5	00	.....	50	00
38.	Elevatoes, 3 (del.) at	7033	33	.....	21100	00
39.	Safety treads 184 (del.) at	2	25	.....	414	00
42.	Pumping 58 days (placed) at	3	00	.....	174	00
43.	Backfill 437 cu. yds. (placed) at	1	00	.....	437	00
	Change "A":					
	(a) 13½ tons reinforcing steel (del.)	..	..	.....	352	50

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.	Unit price Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
Change "B":					
(*b*) Raise elevation of basement floor column footings and pile cut off 6", reinforce basement floor with ⅜ bars; 18" centers lengthwise and crosswise; Change mix of concrete from 1:2½:5 to 1:2:4..	..	..	.....	423	61
Total gross estimate				$83759	32
Less previous gross estimate				50822	14
Gross amount this voucher				32917	18
Less 10% reservation				3211	72
Balance				29625	46
700 cement sacks at $0.10				70	00
Net amount this voucher				29695	46
"Liquidated damages, if any, will be deducted from final voucher."					
Total				29695	46

95

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.
*(Not to be signed in duplicate.)
$29,695.46.

—— ——,
—— ——.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.
I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....
Differences as follows:.....
....
....

Approved for $.....

NORMAN M. SMITH,
Civil Engineer, U. S. N.,
Acting Public Works Officer.

—— ——,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.
†Fill in from 1 to 4 as appropriate.
‡Fill in from A to C as appropriate.

96 Department No. 865
Voucher No. 4.
Contract No. 2469.
Date March 8, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: —.
Date of Delivery or Service Feb. 28, 1918.

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price			Amount.	
		Dolls.	Cts.	Per—	Dollars.	Cts.
1	Excavation, 8,556 cu. yd. (placed)	100	..	.....	8556	
2.	Piles, 975 (delivered)	200	..	.....	19500	
2*a*.	Piles, 710 (placed)	500	..	.....	3550	
3.	Concrete 1:2½:5 697.54 cu. yd. (del.)	600	..	.....	4185	24
3*a*.	Concrete 1:2½:5 697.54 cu. yd. (pl.)	300	..	.....	2092	62
4.	Concrete 1:2:4 43.2 cu. yd. (del.)	650	..	.....	280	80
4*a*.	Concrete 1:2:4 43.2 cu. yd. (pl.)	300	..	.....	129	60

5.	Concrete 1:1½:3 2.5 cu. yd. (del.)	700	..	.....	17	50
5a.	Concrete 1:1½:3 2.5 cu. yd. (del.)	300	..	.....	7	50
7	Form lumber 215.25 M F. B. M. (Del.)	3000	..	.....	6457	50
7a.	Form Lumber 15 M F. B. M. (pl)	3400	..	.....	510	
8.	Form Interior Columns (Del.) 30	1000	..	.....	300	
9	Reinforcing steel, 250.674 Ton (Del.)	6700	..	.....	16795	13
9a.	Reinforcing steel 9.64 Ton (pl.)	2350	..	.....	226	54
10.	Cement Floor 6", 8,359 sq. ft. (del.)	13	..	.....	1086	67
10a.	Cement Floor 6", 8,359 sq. ft. (pl.)	10	..	.....	835	90
11	Cement topping ¾" 12,000 sq. ft. (del.)	06	..	.....	720	
12.	Cement topping 1-22 9,600 sq. ft. (del.)	02	..	.....	192	
24	Doors, metal covered, 1,008 sq. ft. (del.)	100	..	.....	1008	
25.	Doors Kelamein 63 sq. ft. (del.)	200	..	.....	126	
39	Safety treads 184 (del.)	225	..	.....	414	
42.	Pumping 56 days (placed)	300	..	.....	168	
43.	Backfill 437 cu. yd. (placed)	100	..	.....	437	
	Change A:					
	(a) 13½ Tons reinforcing steel	..	..	.....	352	50
	Change B:					
	(b) Raise elevation of basement floor column footings and pile cut off 6"; reinforce basement floor with ⅜" bars, 18" centers, lengthwise and crosswise; change mix of concrete from 1:2½:5 to 1:2:4	..	..	.....	423	61
	Total				50822	14

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
	Total Gross Estimate				50822	14
	Less previous gross estimate				46844	37
	Net amount of this voucher				3977	77
	Less 10% reservation				397	78
	Balance				3579	99
	1,036 bbls. cement at $2.13 gross	2,206.68				
	less 1,250 sacks at $0.10	125.00			2081	68
					$1498	31
	Total				$1498	31

97

(Certification and bill to be completely filled in by payee, without alteration or erasure at any time.)
I certify that the above bill is correct and just and that payment therefor has not been received.
*(Not to be signed in duplicate.)

——— ———,
——— ———.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....
Differences as follows:.....
.....
....

Approved for $.....

——— ———,
Chief of Bureau Yards and Docks.

Paid by Check No. 29,188, dated Mch. 20, 1918, on ——— ——— in favor of ———, for $1,498.31.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

98 Department No. 866.
Voucher No. 3.
Contract No. 2469.
Date, Jan. 3, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service Jan. 1, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation, 8,156 cu. yds. (in place) at.....	1	00	.....	8156	00
2.	Piles, 696 (delivered) at.....	2	00	.....	1392	00
2*a*.	Piles, 680 (In place) at.....	5	00	.....	3400	00
3.	Concrete, 1:2.5:5, 291 cu. yds. (del.) at.....	6	00	.....	1746	00
3*a*.	Concrete 1:2.5:5, 336.54 cu. yds. (Placed) at.....	3	00	.....	1009	62

7.	Form Lumber, 197.47 M. B. F. (del.) at.....	30	00	.....	5924	10
7a.	Form Lumber, 13 M. B. F. (placed) at.....	34	00	.....	442	00
8.	Form Interior Columns, 30 Del. at.....	10	00	.....	300	00
9.	Reinforcing steel (del.) 269.29 tons at.....	67	00	.....	18042	43
9a.	Reinforcing Steel (placed) 1 ton at.....	23	50	.....	23	50
11.	Cement Flooring ¾" (Del.) 12,000 at.....	0	06	.....	720	00
12.	Cement Topping, ½" (Del.) 9,600 at.....	..	02	.....	192	00
42.	Pumping, 45 days at.....	3	00	.....	135	00
	Total gross amount this voucher.....				41482	65
	Less previous gross estimate.....				19269	00
	Gross amount this voucher.....				22213	65
	Less 10% Reservation.....				2221	37
	Net amount this voucher.....				19992	28
	"Liquidated damages, if any, will be deducted from the final voucher."					
	Total				$19992	28

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

Voucher for Purchases and Services Other Than Personal.—Continued.

*(Not to be signed in duplicate.) —— ——, ——.

$1,992.28.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service; that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

NORMAN M. SMITH,
Civil Engineer, U. S. N., Public Works Officer.

——, ——,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

99 Department No. 866.
Voucher No. 3.
Contract No. 2469.
Date, Feb. 5, 1918.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service Feb. 1, 1918.
"General Storehouse Building, Navy Yard, Charleston, S. C."

9—855

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
1.	Excavation, 8,456 cu. yds. placed at.....	1	00	.....	8456	00
2.	Piles, 756, delivered, at.....	2	00	.....	1512	00
2*a*.	Piles, 710, placed at.....	5	00	.....	3550	00
3.	Concrete, 1:2½:5, 638.54 yds. del.....	6	00	.....	3831	24
3*a*.	Concrete, 1:2½:5, 638.54 yds. placed.....	3	00	.....	1915	62

Voucher for Purchases and Services Other Than Personal.—Continued.

Item.		Unit price. Dolls.	Cts.	Per—	Amount. Dollars.	Cts.
7.	Form lumber, 215.25 M. F. B. M., del. at	30	00	.....	6457	50
7*a*.	Form lumber, 15 M. F. B. M., placed at	34	00	.....	510	00
8.	Form interior columns, 30 del., at	10	00	.....	300	00
9.	Reinforcing steel, 289.29 tons, del	67	00	.....	18042	43
9*a*.	Reinforcing steel, 5.66 tons, placed	23	50	.....	133	01
10.	Cement floor, 6″, 3,559 sq. ft. del	..	13	.....	462	67
10*a*.	Cement floor, 6″, 3,559 sq. ft. placed	..	10	.....	355	90
11.	Cement topping, ¾″ 12,000 sq. ft. del	..	06	.....	720	00
12.	Cement topping, ½″ 2,600 sq. ft. del	..	02	.....	192	00
42.	Pumping, 52 days, placed	3	00	.....	156	00
43.	Backfill, 250 cu. yds. placed	1	00	.....	250	00
	Total gross amount this voucher				$46844	37
	Less previous gross estimate				41482	65
	Gross amount this voucher				$5361	72
	Less 10% Reservation				536	17
	Total				$4825	55
	2,251 bbls. cement at $2.13 gross	$4794	63			
	Less 3,500 sacks returned at 10c	350	00			
	Net deduction for cement furnished				$4444	63
	Net amount this voucher				$380	92

"Liquidated damages, if any, will be deducted from the final voucher."

Total $380 92

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.)

—— ——,

$380.92. —— ——.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service; that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....

Differences as follows:.....

.....

....

Approved for $.....

NORMAN M. SMITH,

Civil Engineer, U. S. N., Public Works Officer.

—— ——,

Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

†Fill in from 1 to 4 as appropriate.

‡Fill in from A to C as appropriate.

100 Department No. 866.
Voucher No. 2.
Contract No. 2469.
Date, Dec. 4, 1917.
Navy Department.
Bureau of Yards and Docks.
N. Y. D. No. 8*a*.
(Form approved by the Comptroller of the Treasury September 5, 1907.)
Title 7-E.
Appropriation: No. 8209—Naval Emergency Fund.
Subhead: Naval Emergency Fund.
Date of Delivery or Service Dec. 1, 1917.
"General Storehouse Building, Navy Yard. Charleston, S. C."

Memorandum Copy of Voucher (—).

Voucher for Purchases and Services Other Than Personal.

The United States to R. H. Arnold Company, Dr.

Address: 629 Woodward Bldg., Washington, D. C.

Item.		Unit price. Dolls.	Cts.	Per—	Amount Dollars.	Cts.
1.	Excavation, 8,006 cu. yds. in place	1	00	c. y.	7006	00
2.	Piles, 616 delivered	2	00	ea.	1232	00
2*a*.	Piles, 616 in place	5	00	ea.	3080	00
3.	Concrete, 1:2, 5:5—83 cy. delivered	6	00	.....	498	00
7.	Form Lumber 141.5 M. F. B. M. delivered	30	00	M.	4245	00

7a.	Form Lumber, 3 M. F. B. M.	34	00	M.	102	00
8a.	Form Interior Columns, 30 delivered	10	00	ea.	300	00
8.	Reinforcing Steel, 12 tons "	67	00	ton	804	00
11.	Cement Flooring, 3-4" 12,000 "	..	06	sq.	720	00
12.	Cement Topping, ½"—9,600 "	..	02	sq.	192	00
42.	Pumping, 30 day	3	00	day	90	00
	Total Gross Estimate this Voucher				19269	00
	Less Previous Gross Estimate				8730	00
	Gross amount this Voucher				10539	00
	Less 10% Reservation				1053	90
	Net amount this Voucher				9485	10
	"Liquidate damages, if any, will be deducted from the final voucher."					
	Total				$9485	10

(Certification and bill to be completely filled in by payee or before signature by payee, without alteration or erasure at any time.)

I certify that the above bill is correct and just and that payment therefor has not been received.

*(Not to be signed in duplicate.)

____ ____,

____ ____.

$9,584.10.

*Where a voucher is certified in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. Example: "Chicago Edison Company, per John Smith, Member of Firm," or Secretary, or Treasurer, as the case may be.

Voucher for Purchases and Services Other Than Personal.—Continued.

Any notations made in spaces provided therefor on the back of this voucher become a part of this certificate.
I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service, that the prices charged are just, reasonable, and in accordance with the agreement, and that they were secured in accordance with Sections †..... and ‡..... of the methods stated on the reverse hereof.

Account submitted for..... $.....
Differences as follows:.....
.....
....

Approved for $.....

NORMAN M. SMITH,
Civil Engineer, U. S. N.,
Public Works Officer.

—— ——,
Chief of Bureau Yards and Docks.

Paid by Check No. —, dated —— —, 19—, on —— —— in favor of ——, for $—.

†Fill in from 1 to 4 as appropriate.
‡Fill in from A to C as appropriate.

101 1. 2469.
Oct. 3, 1917.
Dept. No. 326.
Date of delivery or service Nov. 1, '17.

Appropriation No. 8209 Naval Emergency Fund.
Subhead Naval Emergency Fund.
Title 7-E.
"General Storehouse Building, Navy Yard, Charleston, S. C."

Memorandum Copy of Voucher.

The United States to R. H. Arnold Company.

Address: 629 Woodward Bldg., Washington, D. C.

Voucher for Purchases and Services Other Than Personal.

Item.	Items.	Unit price.	Amount.
1.	Excavation, 4,980 C. yds. in place	1.00 c. y.	4980.00
2.	Piles, 178, delivered	2.00 ea.	356.00
2a.	Piles, 125, in place	5.00 "	625.00
7.	Forms lumber, 65.5 Ft. b. m. delivered	30.00 M.	1965.00
9.	Reinforcing steel, 12 tons delivered	67.00 T.	804.00
	Total amount this voucher		8730.00
	Less 10% reservation		873.00
	Net amount this voucher		7857.00
	Total		7857.00

Voucher for Purchases and Services Other Than Personal.—Continued.

I certify that the above bill is correct and just and that payment therefore has not been received.
$7,857.00.

——— ———.

I certify that the above articles have been received by me in good condition, or the service performed as stated; that they were necessary for the public service; that the prices charged are just, reasonable, and in accordance with agreement, and that they were secured in accordance with Sections — and — of the methods stated on the reverse hereof.

N. M. SMITH,
Civil Engineer, U. S. N.,
Public Works Officer.

Paid by check 16094 dated Nov. 20, 1917, on ——— ——— in favor of ——— ———, for $—.

102 *Assignment of Errors.*

Filed July 22, 1921.

Comes now the defendants, R. H. Arnold, trading as R. H. Arnold and Company, and Globe Indemnity Company, and file the following assignments of error which they—and each of them—rely upon for their prosecution of the writ of error in the above entitled cause.

First. That the District Court for the Eastern District of South Carolina erred in refusing to try and decide the single issue of jurisdiction presented by the pleadings before entering upon the trial of the claim of plaintiffs on its merits.

Second. That the said Court erred in refusing to submit to the jury for determination the single issue of jurisdiction presented by the pleadings before proceeding to try the claim of plaintiffs on its merits.

Third. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of sub-contract between R. H. Arnold and Company and W. B. Guimarin and Company, dated October 4th, 1917, and admitting the same in evidence for the reason that there was before the Court no valid nor competent proof of the execution of said contract or of the signatures of the parties thereto; and for the further reason that neither the signature of Arnold, nor the signature of the alleged witness was proven.

Fourth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, E. R. Heyward:

"Q. Would you mind looking at this signature and stating whether or not that is Mr. Arnold's signature to that contract?"

103 and in allowing the witness to answer the question for the reason that said testimony was incompetent.

Fifth. That said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, E. R. Heyward:

"Mr. McDonald: Will you look at that statement and state whether or not a copy of that was mailed to Arnold as showing a balance due under the contract?"

and in allowing the witness to answer the said question, for the reason that said evidence was incompetent, being a copy of an original writing, defendants not having been *noticed* to produce the original at the trial.

Sixth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the

trial of the said cause of Exhibit #2, carbon statement from Guimarin to Arnold, dated December 19, 1918, and Exhibit #3, letter *to* Arnold to Guimarin, dated December 21, 1918, and admitting the same in evidence for the reason that said letters were incompetent, irrelevant and immaterial and that from Arnold and Company was not signed by defendant Arnold nor by a proven authorized agent or employee.

Seventh. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #4, carbon copy letter dated January 11, 1919, Guimarin to Arnold; of Exhibit #5, letter January 16, 1919, Arnold to Guimarin; of Exhibit #6, carbon copy letter April 17, 1919, Guimarin to Arnold; of Exhibit #7, letter April 23, 1919, Arnold to Guimarin; of Exhibit #8 carbon copy letter April 26, 1919, Guimarin to Arnold; of Exhibit #9, letter dated May 16, 1919, Arnold to Guimarin, and in admitting the same in evidence for the reason that said letters were irrevelant, incompetent and immaterial and none of those from defendant, Arnold, were proven to have been signed by Arnold personally, nor was there in evidence any
104 proof of authority from Arnold for the signing of the same for and on his behalf so as to bind him.

Eighth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #10, carbon copy of letter February 7, 1918, Guimarin to Arnold; of Exhibit #11, typed copy letter March 30, 1918, Arnold to Guimarin, signed by Rosenheim and in admitting the same in evidence, for the reason that said letters were incompetent, irrelevant and immaterial and none of those from Arnold and Company were shown to have been signed by Arnold personally nor by a constituted and authorized agent or employee, there being no evidence of the authority of the writers of said letters to bind the defendant, Arnold; and for the further reason that the contract in evidence fixed the price of the extras and additions furnished by said sub-contract and was the sole basis for the same.

Ninth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #12, carbon copy letter May 11, 1918, Guimarin to Arnold, with carbon copy estimate of additions, and in admitting the same in evidence for the reason that said evidence was incompetent, immaterial and irrelevant.

Tenth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #13 letter of 25th May, 1918, Arnold to Guimarin, signed by Ralph E. Homann, and in admitting the same in evidence, for the reason that said evidence was incompetent, irrelevant and immaterial and for the further reason that said letter was not signed by the defendant, Arnold, personally nor was there any competent proof of authority on the part of the person purporting to sign said letter to bind the defendant Arnold.

Eleventh. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #14, seven letters, Arnold to
105 Guimarin, signed A. F. Rosenheim, dated March 23, March 26, May 8, May 18, May 20, May 15, May 31, all 1918, and in admitting the same in evidence for the reason that such evidence was incompetent, irrelevant and immaterial and for the further reason that none of said letters were signed by the defendant, Arnold, personally, nor was there any valid and competent proof of authority on the part of the person purporting to sign the same to bind the defendant, Arnold and for a still further reason that said letters did not purport to be a complete history of the transaction.

Twelfth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #15, nine letters Arnold to Guimarin, signed Ralph E. Homann, dated June 20,, May 20, June 24, July 6, Aug. 23, Sept. 3, Sept. 24, Oct. 14, Nov. 30, all 1918, and Exhibit #16, letter June 26, 1918, Arnold to Guimarin, signed by Ralph E. Homann, and in admitting the same in evidence, for the reason that said evidence was incompetent, irrelevant and immaterial and for the further reason that said letters were not signed by defendant personally nor was there valid evidence or proof before the Court of authority on behalf of the person purporting to sign said letters to bind the defendant Arnold and, further still for the reason that said letters did not purport to be a complete history of the transaction.

Thirteenth. That the said court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, W. B. Guimarin:

"Q. Mr. Guimarin, do you know of your own knowledge that all of the work called for by this subcontract was performed by your firm?"

and in allowing the said witness to give as his opinion that the work had been done according to the terms of his contract instead of stating and proving what was actually done and allowing the Court and the jury to determine compliance with this contract.

106 Fourteenth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of Witness, W. B. Guimarin,

"Mr. McDonald: Mr. Guimarin, have you read the specifications under the head of plumbing and heating?
A. Yes, sir.
Q. Have you done all of the work?
A. Yes, sir.

Exception of defendant's counsel will stand through all of this.

Q. What about roof, drains and fire service?
A. Roof drains and fire service—I don't know, that may go under

the head of general drainage. The words "general drainage" there—I suppose it must be——

Q. State whether or not you did do the work.

A. I did do that; yes, sir.

Court: What does "fire service" go under?

A. That came under water service there.

Court: Under the head of plumbing?

A. Yes, sir.

Court: Fire service did?

A. Yes, sir.

Mr. McDonald: You completed both the plumbing and the drainage?

A. Yes, sir.

Q. In accordance with the contract?

A. Yes, sir.

Q. With regard to the changes that were authorized, we have already proved those three changes in evidence there. I will have to refer to them in order to intelligently question about them. Will you look at the change in radiators, there, and state whether or not you completed that work?

Court: What is the date of that? What exhibit are you handing to him?

Mr. McDonald: #10, your Honor. The work specified in Exhibit #10. (To witness) State whether or not you completed the work specified under Exhibit #10?

A. Yes, sir."

and in allowing the witness to answer the same for the reason that said testimony was no more nor less than the opinion of the
107 witness on his own work that the work had been done according to the terms of his contract, instead of requiring plaintiff to prove and the witness to state what was actually done by plaintiff under the contracts and allowing the Court and jury to determine compliance with his contract.

Fifteenth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of the witness, W. B. Guimarin,

"Q. Was that estimate a fair value of the work done?

Objection: The contract says a fair value and basis.

Q. What was the basis you took for the extra work?

A. Well, I hardly know how to answer that—as a basis——

Q. State whether or not you furnished estimates to Arnold & Co. covering that extra work?

A. Yes, sir, I did.

Q. And state whether or not those estimates were the basis upon which you did it?

A. Yes, sir, that is it.

Q. Referring to Exhibit #12, if your Honor pleases, Change D, will you look at this, entitled "Additional Plumbing, Government

Storehouse," and state whether or not the work covered by that statement was done by you?

Same objection. Overruled.
Exception.

A. Yes, sir.
Q. Is that a fair value for that work, Mr. Guimarin?
A. Yes, sir.

Same objection. Overruled."

and allowing him to answer the same for the reason that said evidence allowed the witness to give as his opinion, an estimate
108 of the value of the work done, whereas the contract between the parties fixed the determination of the cost of extras and additions by its own terms and the Court should have required proof thereof in accordance with the terms of the contract.

Sixteenth. That said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #18, photo-print of letter from Bureau of Yards and Docks to Navy Yard, Charleston, stamped with date April 16th, 1920, and in admitting same in evidence for the reason that said evidence was irrelevant, incompetent and immaterial and did not show or purport to show that it represented a final settlement between the Government and the defendant, Arnold; and for the further reason that said letter admitted in evidence was a copy, the original of which no notice had been given defendants to produce

Seventeenth. That said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of the witness, G. S. Burrell:

"Mr. McDonald: What amount was allowed by the Government Change C, with particular reference to the plumbing?"

and in allowing the witness to answer the same for the reason that said evidence was irrelevant, incompetent and immaterial and for the further reason that the basis of paying to plaintiff, if any, is that fixed by his contract with Arnold and not the basis of Arnold's compensation from the Government.

Eighteenth. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, G. S. Burrell,

"Court: Can you pick out what was allowed for work done by Guimarin to Arnold under Change D of the contract?"

109 and allowing the witness to answer the same, for the reason that said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, is the basis fixed in his contract with Arnold and not the basis of Arnold's compensation from the Government.

Nineteenth. That said Court erred in overruling the objection of counsel for plaintiffs in error to the following question, asked of the witness, G. S. Burrell,

"Mr. McDonald: Referring to Change E, tell the Court what credit, if any, was allowed to Arnold for work done by Guimarin & Co. on that change?"

and in allowing the witness to answer the same, for the reason that the said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, was fixed in his contract with Arnold and is not the basis of Arnold's compensation from the Government.

Twentieth. That the Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of the said cause of Change F in the contract showing the amount paid Arnold by the Government, and admitting the same in evidence, for the reason that the said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, was fixed in his contract with Arnold and is not the basis of Arnold's compensation from the Government.

Twenty-first. That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness G. S. Burrell,

"Court: Was there any revision after that?"

and in allowing the witness to answer the same, for the reason that the best evidence was the writing covering the revision, if any, and the recollection or opinion of the witness was secondary and incompetent.

110 Twenty-second. That said Court erred in overruling the objection of counsel for plaintiffs in error at the trial of said cause to the introduction in evidence of Exhibit #19, carbon copy letter December 6, 1918, Guimarin to Arnold, and admitting the same in evidence, for the reason that said evidence was irrelevant, incompetent and immaterial.

Twenty-Third. That the said Court erred in overruling and denying the motion made by counsel for plaintiffs in error at the close of all the evidence to direct a verdict for defendants upon the following grounds:

I.

"Because there is an entire failure of proof of a final settlement within the terms of the Act.

II.

Because there is no evidence to show administratove determination of amount due R. H. Arnold and Company by the United States or by United States to defendant, Arnold.

III.

Because the entire evidence shows the date of final settlement, if any final settlement there was, was not six months or more prior to the commencement of this action.

IV.

Because the evidence fails to show that there was such completion and final settlement as is contemplated by the Act six months or more, and within one year, prior to the commencement of this action.

V.

Because there is a variance between the claim of plaintiff as shown in his petition and in the proof.

111

VI.

Because the evidence fails to show acceptance of the work done by petitioner under his contract as alleged.

VII.

Because there is no valid proof of the value of the additional work as alleged to have been done by the plaintiff under his contract with defendant, Arnold.

VIII.

Because there is no valid proof of performance of plaintiff's contract."

Twenty-fourth. That the said Court erred in directing a verdict for the plaintiffs, there being an entire failure of proof in support of their claim.

Twenty-fifth. That the said Court erred in ordering and allowing the judgment against defendants for the full amount of the indemnity bond in the sum of sixty-five thousand one hundred and ninety ($65,190.00) dollars and ordering and authorizing the entry of judgment for that amount.

Twenty-sixth. That the said Court erred in ordering and directing a reference to a master of the claims of the intervenors herein under its order dated 18th of June, 1921.

Wherefore, the said defendants and plaintiffs in error pray the judgment of the District Court for the Eastern District of South Carolina be reversed.

LOGAN & GRACE,
WILLIAM HENRY WHITE,
ELWOOD P. MOREY,
Attorneys for Plaintiffs in Error,
Defendants in the Lower Court.

112 *Order Extending Time to File Bill of Exceptions.*

Filed July 7, 1921.

On motion of Messrs. Logan & Grace and William Henry White, Esqr., attorneys for defendants above named,

It is ordered, That the time within which the defendants may prepare, file and serve their bill of exceptions herein be, and it is hereby, extended and enlarged to the 15th day of July, 1921, including that day.

HENRY A. M. SMITH,
U. S. District Judge.

7 July, 1921.

Order Ex-ending Time to File Bill of Exceptions.

Filed July 15, 1921.

On motion of Messrs. Logan & Grace and William Henry White, Esqr., attorneys for defendants above named,

It is ordered, That the time within which the defendants may prepare, file and serve their bill of exceptions herein be, and it is hereby, extended and enlarged to the first day of August, 1921, including that day.

HENRY A. M. SMITH,
U. S. District Judge.

15 July, 1921.

Order Extending Time to File Record on Appeal.

Filed July 28, 1921.

Good cause having been shown, it is ordered That the time for the filing of the transcript of record herein be enlarged so that the same may be filed with the Clerk of the Circuit Court of
113 Appeals on or before the 31st day of August, 1921, instead of on or before the 15th day of August, 1921, as required by the citation.

HENRY A. M. SMITH,
U. S. District Judge.

28 July, 1921.

Order Extending Time to File Bill of Exceptions.

Filed July 28, 1921.

On motion of Messrs. Logan & Grace and William Henry White, Esqr., attorneys for defendants above named,

It is ordered, That the time within which defendants may prepare, file and serve their bill of exceptions herein be, and it is hereby, extended and enlarged to the 15th day of August, 1921, including that day.

HENRY A. M. SMITH,
U. S. District Judge.

28 July, 1921.

Order Extending Time to File Records on Appeal.

Filed August 31, 1921.

Good cause having been shown, it is ordered, That the time for the filing of the transcript of record herein be enlarged so that the same may be filed with the Clerk of the Circuit Court of Appeals on or before the 19th day of September, 1921, instead of on or before the 31st day of August, 1921, as required by the citation.

HENRY A. M. SMITH,
U. S. District Judge.

31 August, 1921.

114 *Memorandum.*

Petition for writ of error filed July 7, 1921.
Order allowing writ of error filed July 7, 1921.
Writ of error issued and filed July 7, 1921.
Supersedeas bond on writ of error dated July 15, 1921.
Penalty, $1,000.00. Conditioned for damages and costs.
Obligors: R. H. Arnold, trading as R. H. Arnold Company, and Globe Indemnity Company, as principals, and The Fidelity and Deposit Company of Maryland as surety.
Citation filed July 7, 1921.
Service acknowledged July 7, 1921.

Stipulation for Clerk to Make up Record.

Filed July 7, 1921.

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va., and

that it be printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

LOGAN & GRACE
WM. HENRY WHITE,
Counsel for Plaintiff in Error.
TOMPKINS, BARNETT & McDONALD,
RUTLEDGE, HYDE & MANN,
Counsel for Defendant in Error.

July 7, 1921.

115 *Clerk's Certificate.*

In the District Court of the United States for the Eastern District of South Carolina.

At Law.

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of The United States to the use of W. B. Guimarin & Company, plaintiffs, against R. H. Arnold, trading as R. H. Arnold Company, and Globe Indemnity Company, defendants, together with the judgment and all papers relating to the same, and as appears by the original record now on file in my office.

Given under my hand and seal of said Court, at Charleston, S. C., in the District aforesaid, this 17th day of September, 1921.

[SEAL.] RICHARD W. HUTSON,
C. D. C. U. S. E. Dist. S. C.

116 On the same day, to-wit, September 19, 1921, the original petition for writ of error, order allowing writ of error, writ of error bond and citation are certified up under Sec. 7 of Rule 14.

Same day, the original exhibits (Contracts &c.) are certified up.

Same day, the appearance of W. Turner Logan, John P. Grace, John I. Cosgrove, Ellwood P. Morey and Wm. Henry White is entered for the plaintiffs in error.

September 24, 1921, the appearance of Frank G. Tompkins and M. G. McDonald is entered for the defendant in error.

October 10, 1921, twenty-five copies of the printed record are filed.

Stipulation as to Briefs.

Filed October 20, 1921.

It is hereby stipulated and agreed between Attorneys for the respective parties in the above entitled case that the rule as to filing briefs be waived, and that the Plaintiffs in Error file their printed

brief on or before Nov. 8th, 1921, and that the briefs for the Defendant in Error be filed on or before Nov. 18th, 1921.

Oct. 8th, 1921.

TOMPKINS, BARNETT & McDONALD,
Attorneys for Plaintiffs in Error.
LOGAN & GRACE,
Attorneys for Defendant in Error.

117 *Addendum to Record.*

Filed November 22, 1921.

United States Circuit Court of Appeals, Fourth Circuit.

1926.

R. H. ARNOLD, Doing Business as R. H. Arnold Company, and GLOBE INDEMNITY CO., Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA for the Use of W. B. Guimarin & Company, Defendant in Error.

Addendum to Transcript.

EXHIBIT No. 18.

Cy-3-Wd-1-6-21.

2469.

Navy Department,

Bureau of Yards and Docks,

Washington, D. C.

April 16, 1920.

From: Bureau of Yards and Docks.
To: Navy Yard, Charleston, S. C.
Subject: Contract No. 2469 (Dept. No. 866), October 3, 1917, of R. H. Arnold Company for general storehouse, Navy Yard, Charleston, S. C.
Reference: (*a*) P. W. O. letter 2469-4, 12/26/19; forwarded by Comdt.'s indt. 23-2469, 71-4, 12/26/19.

118 1. The Contract, of which a copy was delivered to the contractor October 9, 1917, required performance within 120 days thereafter; that is, by Feb. 6, 1918. The building was substantially completed Nov. 30, 1918, so as to allow the use of it by the Government, and that date will accordingly be treated as that

of completion for the purposes of the damage clause, though the work was not then entirely finished and certain items of it were subsequently eliminated from the contract. The entire delay of 297 days was, it is clear from reference (*a*), owing to causes for which the contractor is responsible, and accordingly liquidated damages therefor, amounting at the rate of $50 a day, to $14,850, will be deducted from the stipulated price. Final payment under the contract on this basis is authorized.

(S.) R. S. BAKENHUS,
Assistant to Bureau.

119 *Argument of Cause.*

December 1, 1921 (November Term, 1921), cause came on to be heard before Knapp, Woods and Waddill, Circuit Judges, and is argued by counsel and submitted.

Opinion.

Filed February 9, 1922.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1926.

R. H. ARNOLD, Doing Business as R. H. Arnold Company, and GLOBE INDEMNITY COMPANY, Plaintiffs in Error,

versus

THE UNITED STATES OF AMERICA for the Use of W. B. GUIMARIN & COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

(Argued Dec. 1, 1921. Decided Feb. 9, 1922.)

Before Knapp, Woods, and Waddill, Circuit Judges.

John I. Cosgrove and William Henry White (Logan & Grace and Ellwood P. Morey, on brief) for Plaintiffs in Error, and Frank G. Tompkins and M. G. McDonald for Defendant in Error.

WADDILL, *Circuit Judge:*

On the 3rd of October, 1917, the plaintiff in error, R. H. Arnold, entered into a contract with the United States to erect and
120 furnish materials for the erection of a certain storehouse in the United States navy yard at Charleston, South Carolina. At the time of entering into said contract, the Globe Indemnity Company, also plaintiff in error, as surety, obligated itself in the penalty

of $65,190.00, for the faithful performance of the contract by the Arnold Company, said contract and bond being severally entered into and executed in pursuance of the act of Congress of the 13th of August, 1894, 28 Stat. L., chap. 283, p. 278, as amended by act of February 24th, 1905, 33 Stat. L., chap. 778, p. 811. On the 4th of October, 1917, the defendant in error, W. B. Guimarin & Company, composed of W. B. Guimarin and E. R. Hayward, copartners trading as the W. B. Guimarin Company, contracted with the Arnold Company as sub-contractor to furnish the labor, materials, tools, appliances and other things required for all plumbing, heating, roofing, drains and fire surface, in connection with such building. The work under said contracts was completely performed, and final settlement made determining the amount due by the government. This suit, in the name of the United States, suing for the benefit of the sub-contractors, was instituted to recover the balance due the sub-contractor, (the general contractor having failed to pay the same), more than six months and within one year after the making of the final settlement as aforesaid, to-wit: on the 16th day of April, 1920, the United States having instituted no suit during the first period of six months after such settlement. After bringing the suit, sundry other sub-contractors and material men duly filed their petitions of intervention, as authorized by the act of Congress in question. The defendant filed its answer to the plaintiff's petition, and raised the question of jurisdiction, alleging the suit was prematurely brought, that is to say, within the first six months of the period after settlement of the accounts, the defendant's contention being that the 20th day of September, 1920, and not the 16th of April, 1920, was
121 the true date of the settlement, assuming any final settlement had ever been made under said contract within the meaning of the act. Plaintiff in error insisted that this question should be determined in advance of the hearing on the merits, either by the court itself, or by submitting the same to the jury. This motion the court overruled, believing it best to hear the testimony thereon, and try the whole case on its merits. The case accordingly went to the jury, the defendant insisting that the jury should be sworn not only to try the claim as presented by the plaintiffs, but also those of the intervening petitioners, which motion was also overruled. Upon testimony being adduced on the issues thus presented, namely, the question of jurisdiction raised as aforesaid, and upon the merits as to the plaintiff's claim, the defendants moved to direct a verdict as well upon the merits, as upon the question of jurisdiction, which motions the court overruled, and instructed the jury to render a verdict in favor of the plaintiffs for the amount due them under their contract, to-wit: $7,693.31, with interest from the 19th day of December, 1918. Judgment was duly entered thereon, and the defendants excepted to all action taken, and the case is before this court on writ of error.

The assignments of error, 26 in all, are made to the rulings of the court below. These need not be considered in detail, but grouped according to their subject matter. They relate chiefly to the question of jurisdiction, which turns upon (1) whether or not a final settlement of the account had been made, when made, and whether

the suit was prematurely instituted. (2) Whether the court should have impaneled a jury to try the plaintiff's claim alone, or together with the other intervening petitioners; (3) to the ruling of the court in admitting in evidence the contracts in suit, and sundry correspondence had in connection therewith, as well between the parties to the contracts, as with government officials; (4) whether
122 there was error upon rendering its judgment upon the verdict in the name of the United States, for the full penalty of the bond, and in directing the petitioners' claims to be referred to a master for determination; and (5) whether the court erred in the form of its judgment entered upon the verdict. These will be disposed of in the order named.

First. Was there error in the action of the court in declining preliminarily to dispose of the question of jurisdiction? We think not, certainly upon the pleadings. The defendants appeared generally, filed their answers, and raised the jurisdictional question along with other defenses in the case. The court acted entirely within its discretion, and wisely, in this matter, after hearing all the testimony, and upon the disposition of the case on its merits. The issue as to jurisdiction depended on whether the suit was prematurely instituted or not. From the plaintiff's standpoint, the final settlement had been ascertained and made as of the 16th day of April, 1920. The government having declined to bring suit within the first six months' period after that date, the plaintiffs procured properly authenticated copies of the contract, bond and settlement of accounts from the government, and instituted this suit on the 20th of November, 1920, seven months after the final settlement, and some 30 days after the right to sue had become effective, upon the expiration of the period in which the government had the sole right to sue.

The date at which the statute begins to run, that is, the twelve months' period within which suit must be instituted, depends upon when there is, or what constitutes final settlement under a contract between the government and a general contractor. Mr. Justice Hughes, in Illinois Surety Co. v. United States, 240 U. S. 214, has made this clear, and to that case, and the authorities therein cited, reference is especially made. Final settlement means when
123 the contract has been performed, and the government in its final adjustment and settlement, according to administrative methods, has determined what, if any, amount, is due thereunder.

The issue is sharply drawn in this case as to when this action was taken by the government, whether on the 16th of April, or the 20th of September, 1920. The district court held that the former, and not the latter, was the date of final settlement, in which we concur. It is true that a letter was written on the subject as late as the 20th of September, but this had relation to the two small items of the account, and had no material bearing on the final settlement, which had been determined upon as of April, 1920. Not only do the facts fully sustain this finding by the trial court, as to the date of settlement, but we think that it is significant that the government, on proper application being made to it, furnished the plain-

tiff with a copy of the contract and bond in question, in order that suit might be brought, if so desired, the government having taken no action. If the 20th of September, and not April, 1920, was the correct date of settlement, the plaintiff would not have been entitled to receive these copies.

Defendants seek to avoid the effect of the settlement on the date in question, claiming that although the work had been completed, the defendants had not acquiesced in the settlement. This position can not be maintained. It is the ascertainment and determination by the proper governmental authorities of the amount due under the contract, that enables the government on the one hand, and sub-contractors on the other, to assert their rights under the bond of the general contractor, and these rights can not be held in abeyance by the mere failure of the general contractor to approve of what the government has done, or concur in the result thereof. Authorities are quite conclusive on this subject. Illinois Surety Co. v. The United States, 240 U. S. 214, supra; United States v. Winker,
124 162 Fed. 401; United States v. Bailey, 207 Fed. 783; United States v. Robinson, 214 Fed. 38, 130 C. C. A. 434; United States v. Robinson, 251 Fed. 461, 163 C. C. A. 637; United States v. Title Guaranty Co., 254 Fed. 958, 166 C. C. A. 320.

This position is untenable for another reason. It is contrary to the very spirit and purpose of the acts in question, which are highly remedial in character, and intended to afford a prompt remedy to material men and laborers under the bond of the general contractor, and should be interpreted liberally in favor of the sub-contractors. U. S. F. & G. Co. v. Golden, etc., 191 U. S. 416; Hill v. American Surety Co., 200 U. S. 197; Hill v. Mankin, 215 U. S. 533; Alexander Bryant & Co. v. N. Y. Steamfitting Co., 235 U. S. 327; Illinois Surety Co. v. John Davis Co., 244 U. S. 376. To maintain the position of the general contractor in this respect, would be entirely subversive of the interests alike of the government and of the sub-contractors, and largely destroy the benefits sought to be attained by the act.

Second. A careful examination of the several documents offered in evidence, and the correspondence in connection therewith, as well between the contractor and sub-contractor, and government officials, convinces us that these exceptions, one and all, are without merit. To illustrate: One relates to the signing of the contract with the sub-contractor, when its due execution is admitted in the pleadings; and while in some instances the introduction of letters and papers of the character mentioned, might be subject to exception, or, in proper cases, call for proof as to the execution of the same, or for the authority to sign such letters, still, in this case, where they consist mainly of correspondence between the parties, of and concerning the very subject matter of this suit, with the amount claimed undisputed and unpaid two years, it does not appear at least that any possible prejudice could have arisen from the
125 admission in evidence and a full consideration of all the papers objected to.

Third. Was there error in the action of the court in according to the plaintiffs singly, a jury trial, excluding the cases of the several petitioners, and in entering judgment directing that the latter claims be ascertained by a master?

Whatever may have been the belief originally on the part of some, as to whether action on a contractor's bond of the character under consideration here, was a proceeding at law or in equity, it is now and has long since been definitely held to be an action at law. Illinois Surety Co. v. The United States, 240 U. S. 214, 223, supra. In actions at law, the right to trial by jury follows, it being a right granted by the constitution of the United States, where more than twenty dollars is involved. (Const. VII amendment.) The sole question therefore on this exception is whether there should have been a single jury trial of the claims of the plaintiffs and the several petitioners jointly, instead of that of the plaintiffs alone. We think it clear that a jury should have been impaneled to try and dispose on a single trial, of all of the petitioners' claims, as well as that of the plaintiffs, the statutory period in which petitions could be filed, having expired. It may be said, in passing, that except in most unusual cases, a jury trial should not be had in a case like the present, until the expiration of the period in which petitions may be filed, when a single trial, covering all the claims, should be had. The recent case of Miller v. American Bonding Co., a decision of the Supreme Court, decided December 12, 1921, not yet reported, makes clear what should be done here, and the course of procedure in like cases.

Fourth. Considering the action to be taken upon the judg-
126 ment in this case, it seems to us, the same having been fully tried so far as the plaintiffs are concerned, without request from the petitioners to be heard, or objection on their part as to the course pursued, that the action of the lower court should not be disturbed in its ascertainment of the amount due plaintiffs. The court instructed the jury to find for the plaintiffs, and properly so, as there was no testimony questioning the validity and correctness of their claim, and the judgment should be treated as that of a judgment on the bond, along with other petitioners when judgments are rendered in their favor.

The judgment of the district court directing the reference to a master to pass upon the claims of the several petitioners, should be modified, and a jury trial awarded, to determine in a single trial the amounts due the several petitioners.

Fifth. Was there error in the form of the judgment by the lower court, in that the same was entered in favor of the United States, and for the full amount of the penal sum of the bond sued on?

The court's idea, manifestly, in entering this judgment for the full penalty, was that under South Carolina practice, such action constituted a forfeiture of the bond, and enabled persons in the position of the plaintiffs and the petitioners to come in and assert their claims, the aggregate not to exceed the amount of the bond, so far as the

surety was concerned. The record in this case is a little confusing, in that the judgment entered on July 7th, 1921, is not in the exact terms of the order of the judgment of 18th of June, 1921. It is evident upon consideration of the order of judgment, and judgment thereon, that the court held, and meant to hold, that the contract between R. H. Arnold & Co. and the United States, dated the 3rd of October, 1917, referred to in the proceedings, had been fully
127 performed, and final settlement made on the 16th day of April, 1920, and that there was due to the plaintiffs from the general contractor, the sum of $7,693.31, with interest from 19 December, 1918, amounting in all to $9,035.59, and that suit having been instituted upon the bond in the name of the United States, suing for the use of W. B. Guimarin & Company, judgment should be entered in favor of the United States, for the sum of $65,190.00, the penal sum of the bond referred to, to be discharged by the payment to the said Guimarin & Company of $7,693.31, with interest from the 19th of December, 1918, until paid, together with costs $54.11, it appearing that the plaintiffs' and petitioners' claims combined do not exceed the penal sum of said bond.

We think the judgment as thus understood is correct, and should be so modified; and that the several petitioners upon ascertainment of the amounts respectively due them, should be entitled to like judgments, the total judgments, including that of the plaintiffs herein, not to exceed the penalty of the bond.

The decision of the lower court as herein modified, will be approved and affirmed.

Modified and affirmed.

128 *Judgment.*

Filed and Entered February 14, 1922.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1926.

R. H. ARNOLD, Doing Business as R. H. Arnold Company, and GLOBE INDEMNITY COMPANY, Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA for the Use of W. B. GUIMARIN & COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this

cause, be, and the same is hereby, modified as set forth in the opinion of this Court filed herein, and as modified it is affirmed; that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of South Carolina, at Charleston, for further proceedings in accordance with the opinion of this Court; and that the costs in this Court be paid by the plaintiffs in error.

February 14", 1922.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.

Petition for Stay of the Mandate.

Filed March 1, 1922.

To the Honorable the United States Circuit Court of Appeals, Fourth Circuit:

R. H. Arnold, doing business as R. H. Arnold Company and Globe Indemnity Company, Plaintiffs in Error, herein, respectfully represent and petition this Court for an order staying the issuance of the mandate of this Court hitherto filed with the clerk thereof in order to allow plaintiffs in error a reasonable time within which to make application to the United States Supreme Court for a writ of certiorari to review the questions considered by this Honorable Court upon a writ of error to the District Court of the United States for the Eastern District of South Carolina, so that all further proceedings in
129 this Court may be suspended and stayed until the determination of the said United States Supreme Court on the application of plaintiffs in error for such writ of certiorari.

And your petitioners will ever pray.

R. H. ARNOLD, DOING BUSINESS AS
R. H. ARNOLD AND COMPANY, AND
GLOBE INDEMNITY COMPANY,
By LOGAN & GRACE,
WM. HENRY WHITE,
JOHN I. COSGROVE,
Attorneys for Petitioners.

Order Staying Mandate.

Filed March 1, 1922.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1926.

R. H. ARNOLD, Doing Business as R. H. Arnold Company, and GLOBE INDEMNITY COMPANY, Plaintiffs in Error,

versus

THE UNITED STATES OF AMERICA for the Use of W. B. GUIMARIN & COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

Upon the application of the Plaintiffs in Error, by their attorneys, Logan & Grace; Wm. Henry White and John I. Cosgrove, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending Plaintiffs in Error's application in the Supreme Court of the United States for a writ of certiorari to this Court, provided the said application is presented in the said Supreme Court within 30 days from this date.

March 1, 1922.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.

130 *Petition for Writ of Error.*

Filed March 21, 1922.

In the United States Circuit Court of Appeals, Fourth Circuit.

No. 1926.

R. H. ARNOLD et al., Plaintiffs in Error,

vs.

U. S. ex Rel. W. B. GUIMARIN & Co., Defendants in Error.

To the Honorable Chief Justice and Associate Justices of the Circuit Court of Appeals:

Your petitioners are plaintiffs in error in the above entitled case, in which case judgment was rendered on, to wit, February 14, 1922, and mandate withheld on motion of plaintiffs in error until March 31, 1922, affirming the final judgment of the District Court of the

United States for the Eastern District of South Carolina, at Charleston, entered in said case in favor of W. B. Guimarin & Company, defendant in error, for Sixty-five Thousand One Hundred Ninety Dollars ($65,190), the penal sum of the bond sued on, to be discharged by the payment to said Guimarin & Company of Seven Thousand Six Hundred Ninety-three Dollars and Thirty-one Cents ($7,693.31) with interest and costs.

Your petitioners pray for a Writ of Error from the said judgment of the said Circuit Court of Appeals to the Supreme Court of the United States upon the following grounds:

This is not a case in which the judgments of the Circuit Court of Appeals is made final; on the contrary, it is a case wherein the jurisdiction of the District Court was not dependent upon the oppo-
131 site parties to the suit being citizens of different States, but was dependent and was invoked solely upon the ground that the suit arose under and was authorized by and jurisdiction was created by the Act of Congress approved November 6, 1920, and known as the Public Works Act (33 Stat. at L., Sec. 11, Ch. 778, Comp. St. 1913, Sec. 6923), said suit further being upon a bond given by Plaintiffs in Error under and required by said Act of Congress as appears on pages 3, 4 and 62 of the printed record before the Circuit Court of Appeals.

Your petitioners further show that the amount of matter in controversy in this suit largely exceeds One Thousand Dollars ($1,000) besides costs.

Your petitioners further show that as shown on pages 10, 11, 48 and 110 of said printed record the jurisdiction of the District Court is in issue, your petitioners asserted in pleadings that no final settlement was authorized on the 17th day of April, 1920 (as alleged in the complaint) or at any other time and denied that more than six months or any other time or less than one year or any other time had elapsed since such completion and final settlement or since such final settlement and admitted that the United States had not entered suit on said bond and said "The Court is without jurisdiction because no final settlement has been made by the United States under said contract."

Assignment of Error is filed herewith.

ELLWOOD P. MOREY,
WM. HENRY WHITE,
JOHN I. COSGROVE,
(W. H. W.,)
Attorneys for Plaintiffs in Error.

132 *Assignment of Errors.*

Filed with Petition for Writ of Error March 21, 1922.

In the United States Circuit Court of Appeals, Fourth Circuit.

No. 1926.

R. H. ARNOLD et al., Plaintiffs in Error,

vs.

U. S. ex Rel. W. B. GUIMARIN & Co., Defendants in Error.

Assignment of Errors.

The Circuit Court of Appeals erred:

1. In affirming the judgment of the District Court.

2. In not reversing the judgment of the District Court and remanding the cause with direction to dismiss the suit for want of jurisdiction.

3. In affirming the judgment on a jury trial in favor of Guimarin & Company and awarding a new and separate jury trial to determine in a single new trial the amounts due the several petitioners other than Guimarin & Co.

4. In affirming the judgment of the District Court and in not reversing its decision because of each of the following several assignments of errors, contained in the record of the Circuit Court of Appeals and here reassigned, namely,

(*a*) That the District Court for the Eastern District of South Carolina erred in refusing to try and decide the single issue of jurisdiction presented by the pleadings before entering upon the trial of the claim of plaintiffs on its merits.

133 (*b*) That the said Court erred in refusing to submit to the jury for determination the single issue of jurisdiction presented by the pleadings before proceeding to try the claim of plaintiffs on its merits.

(*c*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of sub-contract between R. H. Arnold and Company and W. B. Guimarin and Company, dated October 4th, 1917, and admitting the same in evidence for the reason that there was before the Court no valid nor competent proof of the execution of said contract or of the signatures of the parties thereto; and for the further reason that neither the signature of Arnold, nor the signature of the alleged witness was proven.

(*d*) That the said Court erred in over-ruling the objection of counsel for plaintiffs in error to the following question asked of the witness, E. R. Heyward,

"Q. Would you mind looking at this signature and stating whether or not that is Mr. Arnold's signature to that contract?"

and in allowing the witness to answer the question for the reason that said testimony was incompetent.

(*e*) That said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, E. R. Heyward,

"Mr. McDonald: Will you look at that statement and state whether or not a copy of that was mailed to Arnold as showing a balance due under the contract?"

and in allowing the witness to answer the said question, for the reason that said evidence was incompetent, being a copy of an original writing, defendants not having been *noticed* to produce the original at the trial.

(*f*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of the said cause of Exhibit #2, carbon statement from
134 Guimarin to Arnold, dated December 19, 1918, and Exhibit #3, letter of Arnold to Guimarin, dated December 21, 1918, and admitting the same in evidence for the reason that said letters were incompetent, irrelevant and immaterial and that from Arnold and Company was not signed by defendant Arnold nor by a proven authorized agent or employee.

(*g*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #4, carbon copy letter dated January 11, 1919, Guimarin to Arnold; of Exhibit #5, letter January 16, 1919, Arnold to Guimarin; of Exhibit #6, carbon copy letter April 17, 1919, Guimarin to Arnold; of Exhibit #7, letter April 23, 1919, Arnold to Guimarin; of Exhibit #8 carbon copy letter April 26, 1919, Guimarin to Arnold; of Exhibit #9, letter dated May 16, 1919, Arnold to Guimarin, and in admitting the same in evidence for the reason that said letters were irrelevant, incompetent and immaterial and none of those from defendant, Arnold, were proven to have been signed by Arnold personally, nor was there in evidence any proof of authority from Arnold for the signing of the same for and on his behalf so as to bind him.

(*h*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #10, carbon copy of letter February 7, 1918, Guimarin to Arnold; of Exhibit #11, typed copy letter March 30, 1918, Arnold to Guimarin, signed by Rosenheim and in admitting the same in evidence, for the reason that said letters were

incompetent, irrelevant and immaterial and none of those from Arnold and Company were shown to have been signed by Arnold personally nor by a constituted and authorized agent or employee.

135 there being no evidence of the authority of the writers of said letters to bind the defendant, Arnold; and for the further reason that the contract in evidence fixed the price of the extras and additions furnished by said subcontract and was the sole basis for the same.

(*i*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #12, carbon copy letter May 11, 1918, Guimarin to Arnold, with carbon copy estimate of additions, and in admitting the same in evidence for the reason that said evidence was incompetent, immaterial and irrelevant.

(*j*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #13 letter of 25th May, 1918, Arnold to Guimarin, signed by Ralph E. Homann, and in admitting the same in evidence, for the reason that said evidence was incompetent, irrelevant and immaterial and for the further reason that said letter was not signed by the defendant, Arnold, personally nor was there any competent proof of authority on the part of the person purporting to sign said letter to bind the defendant Arnold.

(*k*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #14, seven letters, Arnold to Guimarin, signed by A. F. Rosenheim, dated March 23, March 26, May 8, May 18, May 20, May 15, May 31, all 1918, and in admitting the same in evidence for the reason that such evidence was incompetent, irrelevant and immaterial and for the further reason that none of said letters were signed by the defendant, Arnold, personally, nor was there any valid and competent proof of authority on the part of the person purporting to sign the same to bind the defendant, Arnold, and for a still further reason that said letters did not purport to be a complete history of the transaction.

136 (*l*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #15, nine letters, Arnold to Guimarin, signed Radph E. Homann, dated June 20, May 20, June 24, July 6, Aug. 23, Sept. 24, Oct. 14, Nov. 30, Sept. 3, all 1918, and Exhibit #16, letter June 26, 1918, Arnold to Guimarin, signed by Ralph E. Homann, and in admitting the same in evidence, for the reason that said evidence was incompetent, irrelevant and immaterial and for the further reason that said letters were not signed by defendant personally nor was there valid evidence or proof before the Court of authority on behalf of the person purporting to sign said letters to bind the defendant Arnold, and, further still for the reason that said letters did not purport to be a complete history of the transaction.

(*m*) That the said court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, W. B. Guimarin,

"Q. Mr. Guimarin, do you know of your own knowledge that all of the work called for by this subcontract was performed by your firm?"

and in allowing the said witness to give as his opinion that the work had been done according to the terms of his contract instead of stating and proving what was actually done and allowing the Court and the jury to determine compliance with this contract.

(*n*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of Witness, W. B. Guimarin,

"Mr. McDonald: Mr. Guimarin, have you read the specifications under the head of plumbing and heating?

A. Yes, sir.

Q. Have you done all of the work?

A. Yes, sir.

Exception of defendant's counsel will stand through all of this.

Q. What about roof, drains and fire service?

137 A. Roof drains and fire service—I don't know, that may go under the head of general drainage. The words "general drainage" there—I suppose it must be——

Q. State whether or not you did do the work?

A. I did do that; yes, sir.

Court: What does "fire service" go under?

A. That came under water service there.

Court: Under the head of plumbing?

A. Yes, sir.

Court: Fire service did?

A. Yes, sir.

Mr. McDonald: You completed both the plumbing and the drainage?

A. Yes, sir.

Q. In accordance with the contract?

A. Yes, sir.

Q. With regard to the changes that were authorized, we have already proved those three changes in evidence there. I will have to refer to them in order to intelligently question about them. Will you look at the change in radiators, there, and state whether or not you completed that work?

Court: What is the date of that? What exhibit are you handing to him?

Mr. McDonald: #10, your honor. The work specified in Exhibit #10. (To witness): State whether or not you completed the work specified under Exhibit #10?

A. Yes, sir.

and in allowing the witness to answer the same for the reason that said testimony was no more nor less than the opinion of the witness on his own work that the work had been done according to the terms of his contract, instead of requiring plaintiff to prove and the witness to state what was actually done by plaintiff under the contracts and allowing the Court and jury to determine compliance with his contract.

(*o*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of the witness, W. B. Guimarin,

"Q. Was that estimate a fair value of the work done?

Objection: The contract says a fair value and basis.

Q. What was the basis you took for the extra work?
A. Well, I hardly know how to answer that—as a basis——
Q. State whether or not you furnished estimates to Arnold & Co. covering that extra work?
A. Yes, sir, I did.
Q. And state whether or not these estimates were the basis upon which you did it?
A. Yes, sir, that is it.
Q. Referring to Exhibit #12, if your Honor pleases, Change D, will you look at this, entitled "Additional Plumbing, Government Storehouse," and state whether or not the work covered by that statement was done by you?

Same objection. Overruled.
138 Exception.

A. Yes, sir.
Q. Is that a fair value for that work, Mr. Guimarin?
A. Yes, sir.

Same objection. Overruled."

and allowing him to answer the same for the reason that said evidence allowed the witness to give as his opinion an estimate of the value of the work done, whereas the contract between the parties fixed the determination of the cost of extras and additions by its own terms and the Court should have required proof thereof in accordance with the terms of the contract.

(*p*) That said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit #18, photo-print of letter from Bureau of Yards and Docks to Navy Yard, Charleston, stamped, with date April 16th, 1920, and in admitting same in evidence for the reason that said evidence was irrelevant, incompetent and immaterial and did not show or purport to show that it represented a final settlement between the Government and the defendant, Arnold; and for the

further reason that said letter admitted in evidence was a copy, the original of which no notice had been given defendants to produce.

(*q*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of the witness, G. S. Burrell,

"Mr. McDonald: What amount was allowed by the Government for Change C, with particular reference to the plumbing?"

and in allowing the witness to answer the same for the reason that said evidence was irrelevant, incompetent and immaterial and for the further reason that the basis of payment to plaintiff, if any, is that fixed by his contract with Arnold and not the basis of Arnold's compensation from the Government.

(*r*) That the said Court erred in overruling the objection
139 of counsel for plaintiffs in error to the following question asked of the witness, G. S. Burrell,

"Court: Can you pick out what was allowed for the work done by Guimarin to Arnold under Change D of the contract?"

and allowing the witness to answer the same, for the reason that said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, is the basis fixed in his contract with Arnold and not the basis of Arnold's compensation from the Government.

(*s*) That said Court erred in overruling the objection of counsel for plaintiffs in error to the following question, asked of the witness, G. S. Burrell,

"Mr. McDonald: Referring to Change E, tell the Court what credit, if any, was allowed to Arnold for work done by Guimarin & Co. on that change?"

and in allowing the witness to answer the same, for the reason that the said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, was fixed in his contract with Arnold and is not the basis of Arnold's compensation from the Government.

(*t*) That the Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of the said cause of Change F in the contract showing the amount paid Arnold by the Government, and admitting the same in evidence, for the reason that the said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, was fixed in the Contract with Arnold and is not the basis of Arnold's compensation from the Government.

(*u*) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness G. S. Burrell,

"Court: Was there any revision after that?"

140 and in allowing the witness to answer the same, for the reason that the best evidence was the writing covering the revision, if any, and the recollection or opinion of the witness was secondary and incompetent.

(*v*) That the said Court erred in overruling the objection of counsel for plaintiffs in error at the trial of said cause to the introduction in evidence of Exhibit #19, carbon copy of letter December 6, 1918, Guimarin to Arnold, and admitting the same in evidence for the reason that said evidence was irrelevant, incompetent and immaterial.

(*w*) That the said Court erred in overruling and denying the motion made by counsel for plaintiffs in error at the close of all the evidence to direct a verdict for defendants upon the following grounds:

I.

"Because there is an entire failure of proof of a final settlement within the terms of the Act.

II.

Because there is no evidence to show administrative determination of amount due R. H. Arnold and Company by the United States or by United States to defendant, Arnold.

III.

Because the entire evidence shows the date of final settlement, if any final settlement there was, was not six months or more prior to the commencement of this action.

IV.

Because the evidence fails to show that there was such completion and final settlement as is contemplated by the Act six months or more, and within one year, prior to the commencement of this action.

V.

Because there is a variance between the claim of plaintiff as snown in his petition and in the proof.

VI.

Because the evidence fails to show acceptance of the work done by petitioner under his contract as alleged.

141 VII.

Because there is no valid proof of the value of the additional work as alleged to have been done by the plaintiff under his contract with defendant, Arnold.

VIII.

Because there is no valid proof of performance of plaintiff's contract."

(*x*) That the said Court erred in directing a verdict for the plaintiffs, there being an entire failure of proof in support of their claim.

(*y*) That the said Court erred in ordering and allowing the judgment against defendants for the full amount of the indemnity bond in the sum of Sixty-five thousand one hundred and ninety ($65,190.00) dollars, and ordering and authorizing the entry of judgment for that amount.

(*z*) That the said Court erred in ordering and directing a reference to a master of the claims of the intervenors herein under its order dated 18th of June, 1921.

ELLWOOD P. MOREY,
WM. HENRY WHITE,
JOHN I. COSGROVE,
(W. H. W.,)
Attorneys for Plaintiffs in Error.

142 *Order Allowing Writ of Error.*

Filed March 21, 1922.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1926.

R. H. ARNOLD, Doing Business as R. H. Arnold Company, and GLOBE INDEMNITY COMPANY, Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA for the Use of W. B. GUIMARIN & COMPANY, Defendant in Error.

This day came the Plaintiffs in Error by their attorney, Wm. Henry White, and presented to the undersigned their petition praying for the allowance of a writ of error, and that the record and proceedings in said cause, with all things concerning the same, may be sent to the Supreme Court of the United States, which petition is accompanied by an assignment of errors.

On consideration whereof said petition is granted and the writ of error allowed as prayed for, upon the Plaintiffs in Error giving bond according to law in the sum of $9,000.00, which shall operate as a supersedeas.

It is further ordered that the record to be transmitted in this case shall be the same as the record upon which this case was heard in the Circuit Court of Appeals for the Fourth Circuit, together with a transcript of all the proceedings had and taken in said cause in said Circuit Court of Appeals, including the opinion of said Court, and that the Clerk of the said Circuit Court of Appeals shall transmit to the Clerk of the Supreme Court of the United States, the original contracts and other exhibits which were used in the trial of this cause, and which are now in the custody of the Clerk of the said Circuit Court of Appeals.

March 21st, 1922.

EDMUND WADDILL, JR.,
Judge of the United States Circuit Court of Appeals for the Fourth Circuit.

143 *Writ of Error.*

Issued March 21, 1922.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company, Plaintiffs in Error, and The United States of America for the use of W. B. Guimarin & Company, Defendant in Error, a manifest error hath happened, to the great damage of the said Plaintiffs in Error as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that they under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, this 21st day of March, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of the United States Circuit Court of Appeals, Fourth Circuit.]

CLAUDE M. DEAN,
Clerk of the United States Circuit Court of Appeals for the Fourth Circuit.

Allowed by
EDMUND WADDILL, JR.,
Judge of the United States Circuit Court of Appeals for the Fourth Circuit.

Service of Writ of Error.

The foregoing writ of error is served by lodging a copy thereof for the adverse party in the Clerk's Office of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, where the record remains, on the twenty-first day of March, 1922

Attest: CLAUDE M. DEAN,
Clerk.

[Endorsed:] No. 1926. Original Writ of Error.

144 *Citation.*

Issued March 21, 1922.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America for the use of W. B. Guimarin & Company, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Fourth Circuit, wherein R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edmund Waddill, Jr., Judge of the United States Circuit Court of Appeals for the Fourth Circuit, this 21st day of March, in the year of our Lord one thousand nine hundred and twenty-two.

EDMUND WADDILL, JR.,
Judge of the United States Circuit Court of Appeals for the Fourth Circuit.

Service of the foregoing citation is accepted this 24th day of March, A. D. 1922.

FRANK G. TOMPKINS,
Attorneys for W. B. Guimarin & Co., Defendant in Error.

[Endorsed:] No. 1926. Original Citation.

145 *Writ of Error Bond.*

Filed March 27, 1922.

Know all men by these presents, That we R. H Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company, as principal, and National Surety Company, as surety, are held and firmly bound unto The United States of America for the use of W. B. Guimarin & Company, in the full and just sum of Nine Thousand ($9,000.00 dollars to be paid to the said The United States of America for the use of W. B. Guimarin & Company, its heirs, executors, administrators, successors, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of March, in the year of our Lord one thousand nine hundred and twenty-two.

Whereas, lately at the February Term of the United States Circuit Court of Appeals for the Fourth Circuit, in a suit depending in said Court between R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company, Plaintiffs in Error, and The United States of America for the use of W. B. Guimarin & Company, Defendant in Error, judgment was rendered against the said R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company, Plaintiffs in Error, and the said R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company have obtained writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The United States of America for the use of W. B. Guimarin & Company, citing and admonishing it to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, on the 20th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

Now, the condition of the above obligation is such, that if the said R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, otherwise to remain in full force and virtue.

R. H. ARNOLD CO.
R. H. ARNOLD. [SEAL.]
GLOBE INDEMNITY COMPANY,
R. B. CUMMINGS, [SEAL.]
Attorney in Fact.

Attest:

[Seal of Globe Indemnity Co.]

WM. H. WEST,
Attorney in Fact.

[Seal of National Surety Co.]

NATIONAL SURETY COMPANY,
GEO. F. PARKS, [SEAL.]
Attorney in Fact.

Signed and sealed in presence of
JOHN S. STUM.

Approved by:
EDMUND WADDILL, JR.,
Judge of the United States Circuit Court of Appeals for the Fourth Circuit.

146 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 30th day of March, A. D., 1922.

[Seal of United States Circuit Court of Appeals, Fourth Circuit.]

CLAUDE M. DEAN,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

Endorsed on cover: File No. 28,810. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 855. R. H. Arnold, doing business as R. H. Arnold Company, and Globe Indemnity Company, plaintiffs in error, vs. The United States of America for the use of W. B. Guimarin & Company. Filed April 6th, 1922. File No. 28,810.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 320.

R. H. ARNOLD, DOING BUSINESS AS R. H. ARNOLD COMPANY AND GLOBE INDEMNITY COMPANY, *Plaintiffs in Error,*

versus

THE UNITED STATES OF AMERICA FOR THE USE OF W. B. GUIMARIN & COMPANY, *Defendant in Error.*

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

R. H. Arnold, trading as R. H. Arnold Co. (plaintiff in error), contracted with the Bureau of Yards and Docks,

Navy Department, to construct a warehouse in the Navy Yard at Charleston, South Carolina. He gave bond under the Public Works Act (Act of Congress of the 13th of August, 1894, 28 Stat. L., chap. 283, p. 278, as amended by act of February 24, 1905, 33 Stat. L., chap. 778, p. 811) with the Globe Indemnity Company (plaintiff in error) as surety. Guimarin & Co. (defendant in error) claims to have entered into a sub-contract with Mr. Arnold and sued him and the indemnity company upon this bond, in the District Court of the United States for the Eastern District of South Carolina, at Charleston. Other sub-contractors intervened (R. 149), but no testimony was offered in their behalf. Verdict was rendered for Guimarin & Co. against both defendants for $9,035.59 (R. 36), which the order of judgment (R. 9) shows was made up of the sum of $7,693.31, with interest from December 19, 1918. Final judgment (R. 11) was for $65,190, the full penalty of the bond, with $54.11 costs. The Circuit Court of Appeals in its opinion made it clear that this judgment for the full penalty of the bond was to be discharged by the payment of $7,693.31, with interest from December 9, 1918, and with costs of $54.11. The order of judgment (R. 10) also referred the cause to a master to take proof of the claims of intervening creditors with directions to report the testimony and the master's conclusions of law and fact. The Circuit Court of Appeals modified this order as to *intervening* creditors in these words (R. 152):

> "The judgment of the district court directing the reference to a master to pass upon the claims of the petitioners, should be modified, and a jury trial awarded, to determine in a single trial the amounts due the several petitioners."

Further facts in more detail will be found under the following several headings:

ACCEPTANCE—CONFLICTING DECISIONS.

The Circuit Court of Appeals, in this case, and the Court of Appeals of the District of Columbia, in the case of Arnold v. Thompson & Spear Co., 279 Fed., 307, have rendered opposite decisions upon the same facts. U. S. v. Robeson, 9 Pet. 319, 327, was cited to both, followed by the Court of Appeals and not referred to by the Circuit Court of Appeals.

The *sub-contracts* sued upon in each court were upon the same printed form. Paragraph "second" thereof says (R. 5):

> "Second: That the General Contractor will, in consideration of the said covenants and agreement being strictly performed and kept by the said sub-contractor, as hereinabove mentioned, well and truly pay, or cause to be paid, unto the said sub-contractor the said sum of money above mentioned as the sub-contract price.
>
> "In the Manner Following: In payments on the first of each month as the work progresses amounting to ninety per cent of the value of the completed work, as based on the above contract price, and the remaining ten per cent thirty days after the completion of this sub-contract and acceptance of same by the above named owner or architect."

The opinion of the Court of Appeals, pp. 309, *et seq.*, says that Mr. Arnold had a sub-contract with the corporation to do the plumbing and related work for $3,800.00, which was to be paid as follows:

> "On the 1st of each month as the work progresses * * * 90 per cent of the value of the completed work as based on the above contract price, and the remaining 10 per cent 30 days after the completion of this sub-contract and acceptance of the same by the above-named owner or architect."

* * * "No doubt Commander Burrell had sufficient knowledge to enable him to speak as to the performance of the work, if that was the proper way to establish its performance; but it was not. The contract provided another way, and that should have been followed. The Supreme Court of the United States said a long time ago that:

> " 'Where the parties in their contract, fix on a certain mode by which the amount to be paid shall be ascertained, as in the present case, the party that seeks an enforcement of the agreement must show that he has done everything on his part, which could be done, to carry it into effect. He cannot compel the payment of the amount claimed, unless he shall procure the kind of evidence required by the contract, or show that by time or accident he is unable to do so.' United States v. Robeson, 9 Pet. 319, 326, 9 L. Ed. 142.

"Cases supporting the same view of the law are Kihlberg v. United States, 97 U. S. 398, 24 L. Ed. 1106; Sweeney v. United States, 109 U. S. 618, 3 Sup. Ct. 344, 27 L. Ed. 1053; George A. Fuller Co. v. B. P. Young Co., 126 Fed. 343, 61 C. C. A. 245; Bush v. Jones, 144 Fed. 842, 75 C. C. A. 582, 6 L. R. A. (N. S.) 774. There is no claim here that the corporation was prevented by time or accident from producing the necessary evidence.

"If the work in question has been accepted by the Navy Department or by the Bureau of Yards and Docks, as the contract requires, there should be a record of it, and there should be no difficulty in proving that record by competent evidence. It has not been proven in this case, and therefore the court erred in not sustaining the motion to peremptorily instruct the jury to return a verdict for Arnold.

"For this reason, the judgment is reversed, with costs, and the case remanded, with instructions to grant a new trial."

Our brief in the Circuit Court of Appeals said (Record citations, only, changed):

> "There is no proof of progress. There is no proof of acceptance by the United States (the owner) nor by the Bureau (the architect). Witness Guimarin said the sub-contractor did all the work according to the specifications. Objection was overruled and exception allowed (R. 20). It was ground VI of defendants' motion to direct (R. 163). Assignment of Error Nos. 4 (n) and (w) cover this (R. 160). 'Liquidated damages' letter of April 16, 1920 (R. 47), shows the work was not finished and the September voucher deducted $6,457.50 for work the Government claims was not finished—evidently the same. Mr. Arnold agreed to pay when two things had happened—when the work, done as specified, had been accepted. Then only could Mr. Arnold get his pay from the Government. By this acceptance, only, could controversy be avoided as to whether the sub-contract work was done as specified. Witness Guimarin gave his opinion, only, under his own reading of the contract that the work was done, but neither he nor any one else said it was ever accepted.
>
> U. S. v. Robeson, 9 Pet. 319, 327;
> Sullivan v. Susong, 30 S. C. 323;
> Sullivan v. Byrne, 10 S. C., 122;
> Power & Co. v. Guarantee Co., 83 S. C., 100."

JURISDICTION

The suit was brought under the Public Works Act on November 6, 1920, and the amended Complaint, filed November 20, 1920, says (R. 2):

> "That the contract between the United States Government and the defendant, R. H. Arnold, has been completely performed and finally settled, and final settlement and payment on the account of the said R. H. Arnold was authorized on the 17th day of April,

> 1920, and that more than six months and less than one year has elapsed since such completion and final settlement, and the United States has never entered suit on said bond."

The answer of each defendant says (R. 7, 8):

> "This defendant admits that the contract between the United States Government and him has been completely performed. He denies that final settlement and payment on account of the said R. H. Arnold was authorized on the 17th day of April, 1920, or at any other time and denies that more than six months or any other time and less than one year or any other time had elapsed since such completion and final settlement or since such final settlement and admits that the United States has not entered suit on said bond. This defendant says that the court is without jurisdiction because no final settlement has been made by the United States under said contract."

The Public Work Act authorizes suit on the bond by the United States within six months from completion and final settlement of the contract and further provides:

> "If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit * * * be furnished with a certified copy of said contract and bond upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States * * * against said contractor and his sureties, and to prosecute the same to final judgment and execution: Provided, That * * * it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one

year after the performance and final settlement of said contract and not later."

Plaintiffs in error contend that no "final settlement" was made prior to September 20, 1920 (if ever) and that this suit, commenced within six months (November), is premature; because the Supreme Court has said that

> "This act created a new right of action upon terms named; and hence that an action brought before six months had expired from the time of completion and final settlement of the contract 'could not be sustained'."
>
> Ill. Surety Co. v. U. S., 240 U. S., 214, 217;
> U. S. ex rel. Texas Portland Cement Co. v. McCord, 233 U. S., 157.

What is meant by "final settlement" was also adjudicated in the Illinois Surety Co. case, as follows:

> "* * * We think that the words 'final settlement' in the act of 1905 had reference to the time of this determination when, so far as the government was concerned, the amount which it was finally bound to pay or entitled to receive was fixed administratively by the proper authority. It is manifestly of the utmost importance that there should be no uncertainty in the time from which the six months' period runs. The time of the final administrative determination of the amount due is a definite time, fixed by public record and readily ascertained."
>
> Baker Contract Co. v. U. S., 204 Fed., 390;
> Stitzer v. U. S., 182 Fed., 513.

The whole of the evidence is: 1, a letter from the Public Works Officer of April 20, 1920, to Mr. Arnold and quoting a letter from the Bureau to the Public Works Officer of April 16, 1920; 2, another of September 20, 1920, enclosing final voucher; 3, thirteen monthly vouchers and a final

voucher numbered fourteen; and 4, the testimony of the Public Works Officer. These are now considered.

1. The letter of April 20, 1920, is chiefly relied upon as showing final settlement on that day or on the date (April 16, 1920) of the letter of the Bureau therein quoted. This letter says:

> "1. The Yard is in receipt of authority dated April 16, 1920, from Bureau of Yards and Docks, to prepare final voucher under the above contract, as follows:
>
> > " 'The contract, of which a copy was delivered to the contractor October 9, 1917, required performance within 120 days thereafter; that is, by February 6, 1918. The building was substantially completed November 30, 1918, so as to allow the use of it by the Government, and that date will accordingly be treated as that of completion for the purpose of the damage clause, although the work was not then entirely finished and certain items of it were not substantially eliminated from the contract. The entire delay of 297 days was, it is clear from reference (a), owing to causes for which the contractor is responsible, and accordingly liquidated damages therefor, amounting at the rate of $50.00 a day, to $14,850, will be deducted from the stipulated price. Final payment under the contract on this basis is authorized.'
>
> "2. Your attention has several times been called to the fact that your Special Deposit Account is overexpended $216.10. Will you kindly forward certified check, payable to the Commandant, Navy Yard, S. C., in this amount so that final voucher may be prepared and forwarded to you.
>
> "3. Will you kindly advise whether you are prepared to execute final voucher and unqualified release of claims, prepared on basis of Bu. Y. & D. authority above noted."

This letter therefore is limited by its terms to a notice to Mr. Arnold that the Yard was then authorized to *prepare final voucher*, that he had been assessed $14,850 for liquidated damages, to a demand for $216.10 on special deposit account and to the query as to whether he would execute final voucher and release prepared on the basis of the liquidated damages mentioned.

The Bureau's letter of April 16, 1920, standing alone, says only that liquidated damages for delays, amounting to $14,850, will be deducted from the contract price (of $217,300) and final payment of the balance (of $202,450) is authorized. The letter of April 20 adds only a charge of $216.10 and asks payment of this sum. No other record is produced.

> "It declares that the work would be treated as completed 'for the purpose of the damage clause of the contract.' This limits its effect."
>
> Arnold v. Thompson & Spear Co., 51 App. D. C., 328.

2. The vouchers are explained by the "General Provisions" of the contract as follows:

> "28. Schedule of prices.—Before the first payment becomes due the contractor shall submit * * * an itemized schedule of prices on prescribed forms * * * and the schedule, after it has been approved by the Bureau, will govern the preparation of monthly estimates * * * and * * * the total of the approved schedule shall in every case equal the total contract price. * * * Whenever the contract price is increased or decreased by supplementary agreement or order, the schedule of prices shall be amended to conform to the increased or decreased contract price." (* * * irrelevant provisions are omitted.)
>
> "29. Payments and reservations.—Vouchers will be prepared by the officer in charge of the work as soon

as practicable after the end of each month covering his estimate, according to the schedule of prices, of all material delivered, material worked into place and work done to date. From such gross estimate will be deducted the next previous gross estimate if any, and 10 per cent of the difference unless otherwise specified. The contractor shall certify to the correctness, justness, and non-payment of said vouchers, after which they will be forwarded to the Bureau of Yards and Docks for approval and for reference to the Paymaster General of the Navy for payment by check. Upon the completion of the contract the balance due on account thereof will be covered by similar vouchers, subject to any credits in favor of the Government: Provided, That the contractor shall first execute and deliver a final release to the Government, in such form and containing such provisions as shall be approved by the Navy Department of claims against the Government arising under or by virtue of the contract."

The contract between Mr. Arnold and the United States and these "general provisions" forming a part of it, are of record, but have not been printed because of their length.

That the items were numbered before the work was performed is shown by the monthly vouchers; e. g., we find "items" 1, 2, 2a, 7 and 9, only, on the first voucher (R. 135); and voucher 2 adds "items" 3, 8a, 11, 12 and 42 only (R. 123).

The total of the estimates of work done under each item, when voucher 1 was prepared, is the total of voucher 1 (R. 135), and after deducting the 10 per cent reservation under the contract, the balance is the amount owing. The second voucher (R. 133) carries the estimate of work done under each item up to that time, including the work covered by the first voucher, and the total is called the "total gross estimate." From this is deducted the previous gross estimate, ten per cent reservation of the balance and

the sum remaining is owing; and so on through subsequent vouchers. Each "item" grows until it equals its original estimated cost; e. g., Item 38, elevators, appears first on voucher 8 (R. 101) as delivered, which completed the item, and the same total is in each later voucher. Item 38a, for placing the elevators, appears in voucher 9 (R. 95), with estimated cost of $300, 45 per cent completed and $135 allowed. Voucher 10 shows 75 per cent; voucher 11 shows 90 per cent, and voucher 12 and subsequent ones show 100 per cent and the total allowance. When completed in voucher 14, the total of these "items" equals, for the first time, the contract price of $217,300 (R. 52).

As these vouchers are the only means disclosed in evidence by which the United States fixed the amount owing the contractor, it is important to note that voucher 13, dated January 2, 1919, contained a total of these "items" of $216,440 (R. 60). The next (No. 14—Final Voucher) was not made up and forwarded until September 20, 1920, and the total is $217,300, the stipulated or contract price (R. 52). This difference of $860.00 is neither "fixed" nor "determined" nor explained anywhere else.

Paragraph 17 of the "General Provisions" forming part of the contract (copied herein under head of "Variance") gave the United States the right to make "changes" by increasing or decreasing the work, the decrease or increase in the compensation to be fixed by the United States—by the officer in charge or by a board of not less than three officers as the price was less or more than $500.00. Eight of these "changes" were ordered and lettered "A" to "H" inclusive, to distinguish them from the numbered "items" of work specified in the contract, and they were kept separate on the vouchers.

"Change A" began with $352.50 on voucher 4 (R. 123) and became $472.50 on voucher 8 (Aug. 1, 1918, R. 102), and so appears in each subsequent one, "Change B" also

began with voucher 4 (R. 123), grew to $2,858.83 on voucher 11 (Nov. 1, 1918, R. 83), and so appears on each subsequent one. "Change C" began with voucher 8 (R. 102), grew to $259.90 on voucher 12 (Dec. 2, 1919, R. 68), and so appears subsequently. "Change D" began on voucher 11 (R. 84), became $4,903.70 on voucher 12 (Dec. 2, 1919, R. 69), and later appears the same. "Change E," a decrease of $6,225, was fixed in voucher 12 (Dec. 2, 1918, R. 69), as was also "Change F," an increase of $328.35, in voucher 12 (Dec. 2, 1918, R. 70).

"Change G" an increase of $742.50 and "Change H" a decrease of $6,457.50 appeared for the first and only time in Voucher 14—Final Voucher, forwarded September 20, 1920 (R. 48). The evidence discloses no other time nor manner of "determining" these amounts. This makes the action premature.

Another item appears on the Final Voucher (September 20, 1920), as follows (R. 53):

> "Amount due contractor representing difference between bid price and purchase price of X structural and reinforcing steel authorized by Bu. Y. & D. Ct. 2469, Nov. 4, 1918."

It is not contended that on November 4, 1918, the sum of $3,467.08 or any other sum was fixed; on the contrary, the "difference" was in the price per pound and the number of pounds could not be known until the work was done. The Public Works Officer said he had made a computation prior to September 20, 1920, but if he did he kept it to himself. It was not sent to Arnold & Company nor to the Bureau and is not in evidence. Until this sum was "determined" and taken into the account on September 20, 1920, there could be no "administrative determination" of any amount the United States was "bound to pay."

Arnold & Company used cement belonging to the Navy Yard. In various vouchers up to and including No. 13 (Jan. 2, 1919), he is charged with cement, credited with sacks returned and the balances are deducted from the sums owing. The aggregates on the 13 vouchers are: Cement, $21,825.74; sacks returned, $3,375.00. Voucher 14 (Sept. 20, R. 53), shows: Cement, $23,157.80; sacks returned, $3,590.00. There is no evidence that these new amounts were "determined" by anyone prior to September 20, 1920. The differences are—for cement, $1,332.06; for sacks, $215.00; a net total of $1,117.06, affecting the balance owing.

Two small items on Final Voucher 14 are significant. The item of demurrage, it is affirmatively shown by this voucher, was not "authorized" until September 7, 1920 (R. 54). While the Public Works Officer had asked for the overdraft of $216.10, by his letter of April 20, 1920 (R. 48), he was not "authorized" finally in respect to it until September 7, 1920 (R. 54). *Since these items appear on Voucher 14, it could not have been finally prepared until after September 7, 1920*, and until then no one had "determined" the amount owing. Until all of the items were "determined" there was no "final settlement;" and it is not safe to say that the failure to determine a small one is immaterial, for what is a small one? Is $19.00 small? Then how about $742.50, or $6,457.50?

The Supreme Court has said that the time limit fixed by this Act is more than a statute of limitation. It is a right given upon condition—a question of jurisdiction, but if one sues on a promissory note one day too late, his action is lost.

3. The letter of September 20, 1920, to Arnold & Company (R. 48) reads:

"1. There is enclosed herewith final voucher No.

> 14 covering balance due you, including reservations under the above contract and deducting liquidated damages and other claims of the government as authorized by Bureau of Yards and Docks letters No. 2469 of April 16, 1920, and September 7, 1920. There is also enclosed in quadruplicate, final release of the above contract. It is requested that you sign the original Voucher No. 15 as well as three copies of the final release and return the same to this office where the voucher will be placed in the proper channel for prompt payment. You may retain the green copies of the voucher and the fourth copy of the final release for your files."

This is the first and only time that any one said officially or otherwise, or "fixed" by "public record" or off the record, what is the "balance due" or "amount due," or the amount "which it (the Government) was bound to pay." Evidence fails to show any approval at any time by the "proper channel" or by "Bureau of Yards and Docks" (contract, par. 29). The "method of settlement" (R. 22) contemplates written "instructions for the preparation of final voucher," but they are not produced and the date is not shown, unless it be September 7, 1920 (R. 54), and this is within six months of the bringing of the suit in November. The "written report to the Bureau of Yards and Docks, that the work is completed" and asking "the Bureau's instructions for the preparation of final voucher" (R. 22) was not produced and its date is not shown.

4. The testimony of the Public Works Officer is this: He went on duty at Charleston, January 5, 1920 (R. 24), and is in custody of the records (R. 23). He produced Exhibit 18, which is a mere copy of his letter to Mr. Arnold of April 20, 1920 (R. 24, 47), and was objected to on that ground and that no notice was given to produce the original (R. 24). He had a retained copy of the final voucher and said he would "furnish additional copies of the final voucher

showing exactly all credits allowed" (R. 27). Before September 20, 1920, monthly vouchers had been sent to Mr. Arnold, but none "for the purpose of a final voucher" (R. 27). The witness then said (R. 29, *et seq.*), that the first three or four pages of the final voucher forwarded September 20, 1920, were "typed in April" and the last page in September. After that there was no revision of the *basis* of settlement. He called on Mr. Arnold to make good sums for utilities furnished, reported the facts to the Bureau with recommendations that he be authorized to make deductions on the final voucher and the Bureau approved by letter of September 7, cited on the last page. Mr. Arnold did not have copies of these letters, but witness had demanded the sums from Mr. Arnold. These deductions were "less over-expenditures on contractor's special deposit (authorized by Bu. Yd. & D. let 2469, Sept. 7, 1920), $216.10. Less demurrage chargeable to contractor paid by Supply officer (authorized by Bu. Yd. & D. let. 2469, Sept. 7, 1920), $19.00."

But the witness also said the "basis" of the special deposit of $216.10 was in the contract and not in the April 16 letter (R. 33); that changes G and H and the steel item do not appear on vouchers previous to September 20 (R. 31) and said (R. 34):

> "Commander G. S. Burrell (answers from the floor). The items of the contract require the contractor to furnish everything. Then the credit was taken, for the cement, month by month, as furnished; and I find entries on a number of vouchers of the several amounts, including Feb. 3 voucher, and Feb. 28,—July, August, September, October, November, all 1918."
>
> "Court: In which the cement is mentioned. Not the other, was it?
>
> "A. The other was for structural steel. It was spe-

cified before letting the contract that the contractor should name the price, quotation, which he had obtained from the manufacturers, and on which his proposal to the Government was based. That the Government reserves the right to either furnish him the steel in kind, and thereby give him credit for the steel, or else to instruct him to buy his steel in open market; in which case the Government would pay him the difference between the original quotation obtained from the manufacturers, and the price he actually had to pay for the cement (steel). That would protect the contractor on a rising market. The Public Works Officer was instructed in the beginning that that could be accounted for in the final voucher; so that that item occurs in the final voucher only.

"Court: Was it considered in the memorandum fixing the amount, of the 16th of April, 1920?

"A. No, sir. That was something that had been determined in letting the contract, and its status was not effected by the April contract. (Memorandum.)

"Mr. White: But the amount of it was fixed in the final voucher for the first time?

"A. Yes, sir.

"Mr. McDonald: Commander, did the item of structural steel—had that item been actually computed in your office on April 16?

"A. It had been."

The burden of proof is upon the plaintiff to show by matter of public record and by the best evidence that more than six months and within one year prior to filing suit on November 6, 1920, the Government determined the amount it was bound to pay Mr. Arnold. September 20, 1920, is too late, and until that day when the final voucher was sent, no such amount has been shown by any record nor by the best evidence for these reasons:

(a) While the witness *says* the first pages of the final voucher were "typed" in April, it was never approved by the Bureau as required in paragraph 29 of the contract,

nor as required by the "method of settlement" as stated by him (R. 22).

(b) His "written report" is not in evidence; neither is the action of the Bureau, unless that be the quotation from the letter of April 16, 1920 (R. 47). This is only a copy of the letter to Arnold. The original was not called for and was inadmissible, as hereafter shown.

(c) The letter, if it be in evidence, fixes one item of charge—for liquidated damages—and does no more.

Arnold v. Thompson & Spear Co., 51 App. D. C., 328.

(d) His testimony shows careful selection of words. He says the *basis* of settlement was fixed, etc., yet he admits that "Change G," "Change H," steel, special deposit and demurrage items appeared in the final voucher for the first time and that the last two were not "authorized" until September 7, 1918. While he says that the steel item is fixed by the contract and that he had the computations in his office, "the amount of it was fixed in the final voucher for the first time," and no action by the Bureau is shown.

The totals not fixed, therefore, prior to September, are:

Totals of original "items" changes from $216,440, Jan. 2, 1919, to $217,300, Sept. 20, 1920 (R. 60), an increase of.....	$860.00
(Note: No intervening date is shown when this was fixed.)	
"Change G" appears for the first time Sept. 20, as fixed at.....	742.50
"Change H" appears for the first time Sept. 20, as.....	6,457.50
(Note: The contract required these two	

sums to be fixed by Boards of Officers. These awards are not shown nor are the dates given.)

Steel, computations on which were never closed nor approved, and the amount of which was fixed in the final voucher for the first time (R. 35)	3,476.08
Totals for cement changed from $21,825.74 total up to voucher 13 (Jan. 2, 1919), to $23,157.80 on September 20 (R. 53), and no approval nor previous computation shown, a change of	1,332.06
Total for cement sacks returned, same facts, a change of	215.00
Over-expenditures of special deposit, not "authorized" until Sept. 7, and authority not shown by best evidence	216.10
Demurrage, not "authorized" until September 7, and authority not shown by best evidence	19.00
Total Changes	$13,318.24

The total found owing Mr. Arnold in the final voucher is only $4,725.24 (R. 54). At no previous time was any amount fixed or determined by anyone, nor, so far as the record shows, was ever attempted to be fixed. Until each of the above items items were determined, the amount owing could not be determined.

It is conclusively established therefore—

1. "The time of this determination when so far as the Government was concerned, the amount which it was finally bound to pay," was September 20, 1920, and within six months of the bringing of this action in November, 1920.

2. No amount was fixed prior to that day.

3. Before September 7 two items had not been authorized (utilities $216.10 and demurrage $19.00).

4. Before September 20, no date is shown when changes G and H were fixed ($742.50 and $6,457.50) although fixed of record by awards of Boards under the contract, not in evidence; therefore September 20 is the earliest date shown when these amounts were "determined."

5. Before September 20, no date is shown when the amount of allowance of Mr. Arnold's claim for steel was fixed. Witness Burrell says that he had the computations in his office; but this is one of the things he had to report to the Bureau and have approved (R. 22). Neither his report nor the Bureau's action is in evidence nor is the date of either given. He said the first three or four pages of the voucher were "typed" in April, but typing a voucher at the Navy Yard is not approving the amount by the Bureau and no date of approval of anything by the Bureau is shown except liquidated damages on April 16 and special deposit and demurrage charges on September 7. The letter of September 7 is not in evidence.

6. The total of original items was not allowed, by any "record" or word of testimony, prior to September 20, when for the first time it equals $217,300, the contract price. The largest "amount" prior was $860.00 less.

7. The same is true for the charges for cement and credits for sacks; and the amounts involved are $1,332.02 and $215.00.

Putting it another way, voucher 13 showed that on December 31, 1918, the United States owed Mr. Arnold $981.76 (which it paid) plus 13 reservations amounting to $17,928.12, and reserving on each voucher the liquidated damages question. These damages were fixed April 16, at $14,850.00, which left $3,478.12 owing until September 7, when $216.10 and $19.00 were charged and this is the only possible "amount" shown to have been "fixed by public record" until September 20 when the other claims and

charges appear in the "final voucher" affecting a total of $13,318.24 one way or another, and finally fixing $4,725.24 as the amount the United States was bound to pay; and *there is no record in evidence that even this sum was ever approved by the Bureau.*

Motion of defendants to instruct the jury to return a verdict for defendants on this ground was overruled with exception. Verdict for plaintiff was directed. Exception was granted and error No. IV (w and x) assigned (R. 163 and 164).

We also believe the court erred in trying this question of jurisdiction, which is in abatement, with the case on its merits.

> *Kirven v. V. C. C. Co.*, 145 Fed. Rep., 288;
> *Greensboro v. So. Paving & Con. Co.*, 168 Fed. Rep., 880.

Cases cited in brief for defendants in error follow:
In *U. S. v. Robinson,* 130 C. C. A., 434, the Court said:

> "The date was, therefore, fixed relatively to complete performance of the contract and *final settlement thereof*. We take it that these italicized words refer to the time when the proper government officer, who has the final discretion in such matters, after examination of the facts, satisfies himself that the government will accept the work, as it is, without making any claim against the contractor for unfinished or imperfect work, damages for delay or what not and records that decision in some orderly way."

The letter of April 16, 1920 (R. 47), said:

> "The building was substantially completed November 30, 1918, so as to allow the use of it by the Government, and that date will accordingly be treated as

> that of completion for the purpose of the damage clause, although the work was not then entirely finished and certain items of it were not substantially eliminated from the contract."

That fixed the liquidated damages, only. After this other items aggregating thousands of dollars were fixed for the first time.

From the Robinson case the following is quoted from brief for appellee in error, p. 13:

> "Remembering that the purpose of the statute in this regard was to protect the United States, it follows that there is no merit in the contention that the subcontractor must wait to begin his action until disputes as to completion are finally settled, notwithstanding that the government on its part is entirely satisfied and approves the final settlement of the contract."

September 20, 1920, was the first time Mr. Arnold was told what was due him and was the first opportunity offered him to "dispute" anything. We have never contended and do not now contend that his conduct has anything to do with it.

In *U. S. v. Title Guaranty Co.*, 166 C. C. A., 320, the final voucher was sent (as here) to the contractor and then forwarded to the Bureau and there approved. *The date of this approval by the acting chief of the Bureau was held to be the date of final settlement.* In the case at bar it is not shown that the final voucher was ever sent to the Bureau, nor that it was ever approved there, but it is shown that it was not completed until September—two months prior to filing this suit.

In U. S. v. Arnold, 268 Fed., 130, the Court found that the building was completed July 30. The final voucher, delivered August 15, showed July 30 as the "date of delivery

of service" just as the final voucher in this case shows April 17 as the "date of delivery of service." This may or may not be the date of *completion of the work*. It is not the day of "final settlement." In the Connecticut case the court found only trivial items of debit changed by the Bureau after July 30 and ignored them in plain English. Here the items of debit and credit after April 17 involve thousands of dollars.

Under the head "Department Construction" cases are cited to the effect that weight will be given by the Court to departmental construction of a doubtful statute. This Court has construed this statute, and a Bureau cannot, by saying a certain day is the day it finally settled a matter, make it so, where the plain facts show it settled but one on that day and left many unsettled. It is not a question of construction. It is a question of undisputed fact.

Neither can this question be decided by answering the question of whether Mr. Arnold is hurt. The consent of all parties could not give the court jurisdiction within the six months, even if it were admitted that the United States had no claim.

U. S. v. McCord, 233 U. S., 157, 159, 163, citing Stitzer v. U. S., 105, C. C. A., 51, 182, Fed., 513.

Nor can we now be concerned with Guimarin's condition. The courts of general jurisdiction in the District of Columbia have been and are open. He sought this special limited procedure and at the trial defendants were committed to September 20. He could have brought another action within the limited period.

THE BEST EVIDENCE

Exhibit 18 (R. 47) is a copy of a letter of April 20, 1920, from witness Burrell to Mr. Arnold. No notice to produce

was given, objection was overruled, exception allowed and the copy was admitted (R. 23). This copy when produced also shows that it copies part of a letter of April 16, from the Bureau to the Yard at Charleston, the original of which was produced (R. 23).

Assignment of Error No. IV (p R. 47 and 161) covers this and the rule is elemenatry.

> Greenleaf on Ev. Sec. 84, *et seq.;*
> Main v. Aukam, 4 App. D. C., 51;
> Mfg. Co. v. Iron Works, 75 S. C., 340.

This is the writing chiefly relied on to prove "final settlement" which the verdict says was made April 16, 1920 (R. 9).

Witness Heyward said (R. 14) that a copy of Exhibit No. 2 (R. 37) was mailed to Mr. Arnold; that is, he prepared it, signed it and he presumed that his bookkeeper or stenographer mailed it—he didn't; but he received a reply and this is Exhibit 3, purporting to be signed by Rosenheim as office manager (R. 38). No signature was proven; objections were overruled, exceptions allowed and the writings admitted (R. 14). Assignment of Error No. IV (f) covers these (R. 158). The record shows no notice to produce the original of the statement; no proof of signature of Rosenheim nor of his authority to do anything; the letter says he has "no authority to act in the matter"; and these are the basis for the court's finding that an account stated has been proven (R. 20) and without which the plaintiff has not proved the case on the merits.

Exhibits 4, 6, 8 and 10 are called carbon copies of alleged letters from Guimarin & Co. to Mr. Arnold. The record shows neither proof of mailing any of them nor notice to produce nor call for originals 4, 6 or 8, nor that they are even copies. The replies (Exhibits 5, 7, 9 and 11) are

not signed by Mr. Arnold. There is no proof of the signatures of the alleged senders, Rosenheim, Gunezy and Stum, nor of the authority of either of them. Assignments of Error Nos. IV (g) and IV (h) cover them.

Exhibit 12, witness Heyward said is a copy of a letter and estimate he sent to Mr. Arnold. Witness did not mail it (R. 17). Error No. IV (i) is assigned (R. 159).

The witness said that Exhibit 13 is signed by Ralph E. Homan (R. 17) who is "connected with the R. H. Arnold Company."

> Mr. McDonald: What was his connection with them?
>
> A. I couldn't tell you that. He was in Charleston here for quite a while, on construction work, I presume.
>
> Objection.
>
> Court: He was connected with the work here?
>
> A. Yes, sir.
>
> Court: You had correspondence with him as such?
>
> A. I had correspondence with him.

This was all the evidence. Error No. IV (j) is assigned (R. 159).

Exhibit 14, seven letters, six of which purporting on their faces to be signed by Rosenheim as office manager of defendant Arnold, were admitted without proof of either signature or authority (R. 18). The seventh purports to be signed by "H. G. Lehrbach, Assistant Engineer, U. S. Navy. Error No. IV (k) covers this (R. 159).

Exhibits 15 and 16 are exactly like Exhibit 14 except the supposed signer is Homan; there are ten letters and the error is No. IV (l).

STATED ACCOUNTS

The Court held (R. 20):

"Court: (To Mr. White). As at present advised, I think I will charge the jury that your non-objection to the amounts binds you. He sent you a complete statement of the accounts one year and eleven months before action was brought. Under the general rule, that is an acceptance, unless you objected to in some way. The rule is two years, but not limited—it depends somewhat on circumstances. I think the twenty-three months, and he had to bring a suit, would be sufficient admission."

The statement is Exhibit 2 (R. 37) which witness Heyward said (R. 14) was a carbon copy (R. 15) of a statement he signed and which he presumed his bookkeeper or stenographer mailed; but he didn't mail it. He received Exhibit 3 (R. 38) purporting to acknowledge receipt but not signed by Mr. Arnold, no signature being proved and the author disclaiming, in the letter itself, "authority to act in the matter." Exhibits 4 to 9 show (even if admissible) that matters relating to the account had not been determined, that information from and action by the Government (R. 38) were prerequisite and the proof ends May 16, 1916, with Arnold & Co. saying it could not say whether the account is correct for these reasons. It is not shown that acceptance of the work by the Government was made. The court was in error in finding acceptance of the account by twenty-three months' silence. Either the statement and letters are inadmissible, which leaves no proof of an account stated, or the letters show affirmatively that there was no acceptance or implied agreement. If Mr. Arnold is bound by letters written by alleged clerks or bookkeepers, he is entitled to the disaffirmance shown in their letters.

Charlotte O. & F. Co. v. Hartog, 85 Fed. 155;
Wakefield v. Spoon, 100 S. C. 106.

The following is elementary:

> "The rule is the same in principle at law; a settled account is only *prima facie* evidence of its correctness. It may be impeached by proof of unfairness, or mistake, in law, or in fact."
>
> Perkins v. Hart, 11 Wheat 256.

> "When the account is admitted in evidence as a stated one, the burden of showing its incorrectness is thrown upon the other party. He may prove fraud, omission or mistake, and in these respects he is nowise concluded by the admission implied from his silence after it was rendered."
>
> Wiggins v. Burkham, 10 Wall. 129, 132.

This burden was taken from our shoulders by plaintiff's proof which shows affirmatively mistakes in debit items for changes C, D, and F (R. 37). He did not plead and his counsel did not assert a stated account. He did undertake to show the "value" of these changes by showing the amounts allowed by the Government to Mr. Arnold and his counsel said (R. 26):

> "Mr. McDonald: The purposes of this line of inquiry is to show the amount which the Government allowed Arnold on these particular changes, with a view to showing that our estimates were reasonable and fair valuations."

We show under "variance" that the statement, complaint, verdict and judgment contain and are based on the amounts awarded to Arnold by the Government whereas the amounts owing plaintiff by Mr. Arnold are necessarily different, because Mr. Arnold is entitled to estimated actual cost at the time of doing the work plus ten per cent profit, while plaintiff is entitled to fair valuations based upon the sub-contract

price for the whole of the original sub-contract work. The only other evidence is that witness Guimarin said that the charge of $3,383.50 (R. 37) is "a fair value for that work" as of May 11, 1918, when he made up an estimate (R. 40, 21). Alleged letter of authority to do the work says (R. 41):

> "Compensation for same will be made you in accordance with the original contract between us."

There appears no proof of value of the charges for changes C and F except the sums allowed by the Government to Mr. Arnold. This is a clear mistake.

VARIANCE

Variance arises under proof of claim for additional work. Paragraph 17 of the "General Provisions" forming part of Mr. Arnold's contract with the Government, provided (filed but not printed because of its length):

> "17. Changes—The Government reserves the right to make such changes in the contract, plans, and specifications as may be deemed necessary or advisable, and the contractor agrees to proceed with such changes as directed in writing by the Chief of the Bureau of Yards and Docks. The cost of said changes shall be estimated by the officer in charge, and, if less than $500, shall be ascertained by him. If the cost of said changes is $500 or more, as estimated by the officer in charge, the same shall be ascertained by a board of not less than three officers or other representatives of the Government. The cost of the changes as ascertained above, when approved by the Chief of the Bureau of Yards and Docks shall be added to or deducted from the contract price, and the contractor agrees and consents that the contract price thus increased or decreased shall be accepted in full satisfac-

tion for all work done under the contract: *Provided*, That the increased cost shall be the estimated actual cost to the contractor at the time of such estimate and that the decreased cost shall be the actual or market value at the time the contract was made, both plus a profit of 10 per cent."

Guimarin's contract with Arnold said (R. 5):

> "Third: Should the General Contractor at any times during the progress of said works direct in writing any alterations of, deviations from, additions to, or omissions from the said sub-contract work, then the said contract work shall be done by the Sub-Contractor in the manner so directed. Such changes shall in no way render invalid this contract; but the value of the work omitted shall be deducted from, and the value of the work *added shall be added to, this contract price at fair valuations, using the contract price on the whole of the sub-contract work as a basis for computing such valuations.* No agent of the General Contractor shall have the power to direct or permit any such alterations, deviations, additions or omissions except in writing."

The *complaint claims* for additional work its value "fair valuation" without limitation (R. 2). The *right proven* is to "fair valuations, using the contract price on the whole of the sub-contract work, as a basis for computing such valuations" (R. 5, par. "Third"). The *sum proven* and included in the directed verdict is the sum allowed Mr. Arnold under his contract with the United States (R. 26, 28). This is a fatal variance, because:

(a) Defendant did not agree to pay plaintiff what he received from the Government; neither did plaintiff agree to accept it nor do the work for it.

(b) The basis of compensation was wholly different. Plaintiff was to receive "value." Defendant was to receive

estimated actual cost plus 10 per cent. It was to receive "Fair valuations, using the contract price on the whole of the sub-contract work ($9,950) as the basis." Defendant was to receive "estimated actual cost * * * at the time of such estimate," plus 10 per cent (Oct. 25, 1919). Fluctuating prices, up or down, affected the price the Government was to pay defendant, but not the price he was to pay plaintiff. Suppose the sub-contract had been for the brick work and the Government had increased the size of the building so that twice as many bricks were required. Plaintiff would have the right, upon performance, to twice $9,950—no more, no less. Defendant's compensation was upon an entirely different basis. It was left to a Board, was subject to fluctuating prices and carried an additional percentage of profit.

The fact that the alleged sub-contract made defendant's contract with the Government and the specifications a part was for the sole purpose of specifying the work to be done and the manner of doing it and does not give plaintiff the right to defendant's compensation, *a fortiori*, when a different compensation to plaintiff is specified in the sub-contract. This is a fatal variance.

Sheehy v. Mandeville, 7 Cranch 208;
Fitzsimmons v. Guanahani Co., 16 S. C. 192;
Hursey v. Surles, 91 S. C. 290.

The only other proof is of "reasonable value" as of the time of doing it and not based upon sub-contract price, and agrees with the allowance to Arnold & Co.

PROOF OF SUB-CONTRACT.

Defendant R. H. Arnold Co.'s signature was admitted by him, but that was not admitted by his co-defendant and

proof of his signature was necessary to affect the interest of his co-defendant.

Kolb v. Jones, 62 S. C., 193.

The alleged signature of R. H. Arnold Co. purports to be witnessed by F. Golden (R. 7). He did not testify and proof by him was indispensable.

Chamberlayne's Handbook on Evidence, 15th Ed., sec. 569.

Testimony of Cooper, witness to plaintiff's signature, was shown to be unobtainable (R. 12), but absolutely nothing was shown about Golden. His signature was not proven. He seems to have been overlooked.

Swancey v. Parish, 62 S. C., 240;
United Grocery Co. v. Donnelly, 93 S. C., 580;
Merck v. Merck, 89 S. C., 347;
Russell v. Tunno, 11 Rich. Law, 303;
Martin v. Bowie, 37 S. C., 102.

Under the above cases the court will find that the proof of Mr. Arnold's signature was not by the best evidence and further that the witness Heyward, who undertook to identify it, had not sufficient knowledge and he was too uncertain (R. 13). Objections were overruled, exceptions granted (R. 12, *et seq.*) and Errors Nos. IV (c) and (d) were assigned (R. 157).

ONE JURY TRIAL.

Assignment No. 3 says that the Circuit Court of Appeals erred (R. 157):

"3. In affirming the judgment on a jury trial in favor of Guimarin & Company and awarding a new and separate jury trial to determine in a single new trial the amounts due the several petitioners other than Guimarin & Co."

Objection was duly made (R. 11).

While the Circuit Court of Appeals held (R. 152),

> "That a jury should have been impaneled to try and dispose at a single trial, of all the petitioners' claims, as well as that of the plaintiffs,"

citing the case of *Miller v. American Bonding Company*, decided by this Court, December 12, 1921, and said that the judgment

> "should be modified, and a jury trial awarded to determine in a single trial the amounts due to several petitioners";

nevertheless, what the Court ordered was that

> "judgment should be entered in favor of the U. S. for the sum of $65,190.00, the penal sum of the bond referred to, to be discharged by the payment to the said Guimarin & Co. of $7,693.31, with interest from the 19th of December, 1918, until paid, together with costs of $54.11, it appearing that plaintiffs and petitioners' claims combined do not exceed the penal sum of said bond * * * and that the several petitioners upon ascertainment of the amounts respectively due them should be entitled to like judgments, the total judgments, including that of the plaintiffs herein, not to exceed the penalty of the bond.
>
> "The decision of the lower Court as herein modified, will be approved and affirmed."

We have, therefore, a verdict of a jury by direction

of the Court in a trial of the claim of the one petitioner, only; a judgment on the verdict; an opinion that this is wrong because the claims of all petitioners should have been tried in one trial before the same jury; that judgment affirmed with direction that a new trial before a new jury be had of the claims of all the other petitioners. This required two trials before two juries and the error is plain.

ASSIGNMENT OF ERRORS

The Circuit Court of Appeals erred:

1. In affirming the judgment of the District Court.

2. In not reversing the judgment of the District Court and remanding the cause with direction to dismiss the suit for want of jurisdiction.

3. In affirming the judgment on a jury trial in favor of Guimarin & Company and awarding a new and separate jury trial to determine in a single new trial the amounts due the several petitioners other than Guimarin & Co.

4. In affirming the judgment of the District Court and in not reversing its decision because of each of the following several assignments of errors, contained in the record of the Circuit Court of Appeals and here re-assigned, namely,

(a) That the District Court for the Eastern District of South Carolina erred in refusing to try and decide the single issue of jurisdiction presented by the pleadings before entering upon the trial of the claim of plaintiffs on its merits.

(b) That the said Court erred in refusing to submit to the jury for determination the single issue of jurisdiction presented by the pleadings before proceeding to try the claim of plaintiffs on its merits.

(c) That the said Court erred in overruling the objec-

tion of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of sub-contract between R. H. Arnold and Company and W. B. Guimarin and Company, dated October 4th, 1917, and admitting the same in evidence for the reason that there was before the Court no valid nor competent proof of the execution of said contract or of the signatures of the parties thereto; and for the further reason that neither the signature of Arnold, nor the signature of the alleged witness was proven.

(d) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, E. R. Heyward:

> "Q. Would you mind looking at this signature and stating whether or not that is Mr. Arnold's signature to that contract?"

and in allowing the witness to answer the question for the reason that said testimony was incompetent.

(e) That said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, E. R. Heyward:

> "Mr. McDonald: Will you look at that statement and state whether or not a copy of that was mailed to Arnold as showing a balance due under the contract?"

and in allowing the witness to answer the said question, for the reason that said evidence was incompetent, being a copy of an original writing, defendants not having been noticed to produce the original at the trial.

(f) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of the said cause of Exhibit No. 2, carbon statement from Guimarin to Arnold, dated December

19, 1918, and Exhibit No. 3, letter of Arnold to Guimarin, dated December 21, 1918, and admitting the same in evidence for the reason that said letters were incompetent, irrelevant and immaterial and that from Arnold and Company was not signed by defendant Arnold nor by a proven authorized agent or employee.

(g) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 4, carbon copy letter dated January 11, 1919, Guimarin to Arnold; of Exhibit No. 5, letter January 16, 1919, Arnold to Guimarin; of Exhibit No. 6, carbon copy letter April 17, 1919, Guimarin to Arnold; of Exhibit No. 7, letter April 23, 1919, Arnold to Guimarin; of Exhibit No. 8, carbon copy letter April 26, 1919, Guimarin to Arnold; of Exhibit No. 9, letter dated May 16, 1919, Arnold to Guimarin, and in admitting the same in evidence for the reason that said letters were irrelevant, incompetent and immaterial and none of those from defendant, Arnold, were proven to have been signed by Arnold personally, nor was there in evidence any proof of authority from Arnold for the signing of the same for and on his behalf so as to bind him.

(h) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 10, carbon copy of letter February 7, 1918; Guimarin to Arnold; of Exhibit No. 11, typed copy letter March 30, 1918, Arnold to Guimarin, signed by Rosenheim and in admitting the same in evidence, for the reason that said letters were incompetent, irrelevant and immaterial and none of those from Arnold and Company were shown to have been signed by Arnold personally nor by a constituted and authorized agent or employee, there being no evidence of the authority of the writers of said letters to bind the

defendant, Arnold; and for the further reason that the contract in evidence fixed the price of the extras and additions furnished by said sub-contract and was the sole basis for the same.

(i) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 12, carbon copy letter May 11, 1918, Guimarin to Arnold, with carbon copy estimate of additions, and in admitting the same in evidence for the reason that said evidence was incompetent, immaterial and irrelevant.

(j) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 13 letter of 25th May, 1918, Arnold to Guimarin, signed by Ralph E. Homann, and in admitting the same in evidence, for the reason that said evidence was incompetent, irrelevant and immaterial and for the further reason that said letter was not signed by the defendant, Arnold, personally nor was there any competent proof of authority on the part of the person purporting to sign said letter to bind the defendant Arnold.

(k) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 14, seven letters, Arnold to Guimarin, signed by A. F. Rosenheim, dated March 23, March 26, May 8, May 18, May 20, May 15, May 31, all 1918, and in admitting the same in evidence for the reason that such evidence was incompetent, irrelevant and immaterial and for the further reason that none of said letters were signed by the defendant, Arnold, personally, nor was there any valid and competent proof of authority on the part of the person purporting to sign the same to bind the defendant, Arnold, and for a still

further reason that said letters did not purport to be a complete history of the transaction.

(l) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 15, nine letters, Arnold to Guimarin, signed Ralph E. Homann, dated June 20, May 20, June 24, July 6, Aug. 23, Sept. 24, Oct. 14, Nov. 30, Sept. 3, all 1918, and Exhibit No. 16, letter June 26, 1918, Arnold to Guimarin, signed by Ralph E. Homann, and in admitting the same in evidence, for the reason that said evidence was incompetent, irrelevant and immaterial and for the further reason that said letters were not signed by defendant personally nor was there valid evidence or proof before the Court of authority on behalf of the person purporting to sign said letters to bind the defendant Arnold, and, further still for the reason that said letters did not purport to be a complete history of the transaction.

(o) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of the witness, W. B. Guimarin:

"Q. Was that estimate a fair value of the work done?

"Objection: The contract says a fair value and basis.

"Q. What was the basis you took for the extra work?

"A. Well, I hardly know how to answer that—as a basis—

"Q. State whether or not you furnished estimates to Arnold & Co. covering that extra work?

"A. Yes, sir. I did.

"Q. And state whether or not these estimates were the basis upon which you did it?

"Yes, sir, that is it.

"Q. Referring to Exhibit No. 12, if your Honor

pleases, Change D, will you look at this, entitled 'Additional Plumbing, Government Storehouse,' and state whether or not the work covered by that statement was done by you?

"Same objection. Overruled.

"Exception.

"A. Yes, sir.

"Q. Is that a fair value for that work, Mr. Guimarin?

"A. Yes, sir.

"Same objection. Overruled."

and allowing him to answer the same for the reason that said evidence allowed the witness to give as his opinion an estimate of the value of the work done, whereas the contract between the parties fixed the determination of the cost of extras and additions by its own terms and the Court should have required proof thereof in accordance with the terms of the contract.

(p) That said Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of said cause of Exhibit No. 18, photoprint of letter from Bureau of Yards and Docks to Navy Yard, Charleston, stamped, with date April 16th, 1920, and in admitting same in evidence for the reason that said evidence was irrelevant, incompetent and immaterial and did not show or purport to show that it represented a final settlement between the Government and the defendant, Arnold; and for the further reason that said letter admitted in evidence was a copy, the original of which no notice had been given defendants to produce.

(q) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following questions asked of the witness, G. S. Burrell:

"Mr. McDonald: What amount was allowed by the

> Government for Change C, with particular reference to the plumbing?

and in allowing the witness to answer the same for the reason that said evidence was irrelevant, incompetent and immaterial and for the further reason that the basis of payment to plaintiff, if any, is that fixed by his contract with Arnold and not the basis of Arnold's compensation from the Government.

(r) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness, G. S. Burrell:

> "Court: Can you pick out what was allowed for the work done by Guimarin to Arnold under Change D of the contract?"

and allowing the witness to answer the same, for the reason that said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, is the basis fixed in his contract with Arnold and not the basis of Arnold's compensation from the Government.

(s) That said Court erred in overruling the objection of counsel for plaintiffs in error to the following question. asked of the witness, G. S. Burrell:

> "Mr. McDonald: Referring to Change E, tell the Court what credit, if any, was allowed to Arnold for work done by Guimarin & Co. on that change?"

and in allowing the witness to answer the same, for the reason that the said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, was fixed in his contract with

Arnold and is not the basis of Arnold's compensation from the Government.

(t) That the Court erred in overruling the objection of counsel for plaintiffs in error to the introduction in evidence at the trial of the said cause of Change F in the contract showing the amount paid Arnold by the Government, and admitting the same in evidence, for the reason that the said evidence was irrelevant, incompetent and immaterial, and for the further reason that the basis of payment to plaintiff, if any, was fixed in the Contract with Arnold and is not the basis of Arnold's compensation from the Government.

(u) That the said Court erred in overruling the objection of counsel for plaintiffs in error to the following question asked of the witness G. S. Burrell:

"Court: Was there any revision after that?"

and in allowing the witness to answer the same, for the reason that the best evidence was the writing covering the revision, if any, and the recollection of opinion of the witness was secondary and incompetent.

(v) That the said Court erred in overruling the objection of counsel for plaintiffs in error at the trial of said cause to the introduction in evidence of Exhibit No. 19, carbon copy of letter December 6, 1918, Guimarin to Arnold, and admitting the same in evidence for the reason that said evidence was irrelevant, incompetent and immaterial.

(w) That the said Court erred in overruling and denying the motion made by counsel for plaintiffs in error at the close of all the evidence to direct a verdict for defendants upon the following grounds:

I.

Because there is an entire failure of proof of a final settlement within the terms of the Act.

II.

Because there is no evidence to show administrative determination of amount due R. H. Arnold and Company by the United States or by United States to defendant, Arnold.

III.

Because the entire evidence shows the date of final settlement, if any final settlement there was, was not six months or more prior to the commencement of this action.

IV.

Because the evidence fails to show that there was such completion and final settlement as is contemplated by the Act six months or more, and within one year, prior to the commencement of this action.

V.

Because there is a variance between the claim of plaintiff as shown in his petition and in the proof.

VI.

Because the evidence fails to show acceptance of the work done by petitioner under his contract as alleged.

VII.

Because there is no valid proof of the value of the additional work as alleged to have been done by the plaintiff under his contract with defendant, Arnold.

VIII.

Because there is no valid proof of performance of plaintiff's contract.

(x) That the said Court erred in directing a verdict for the plaintiffs, there being an entire failure of proof in support of their claim.

ELLWOOD P. MOREY,
WM. HENRY WHITE,
JOHN I. COSGROVE,
Attorneys for Plaintiffs in Error.

Office Supreme Court, U. S.
FILED
OCT 16 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1922.~~ 1923

No. ~~320.~~ 31

R. H. ARNOLD, DOING BUSINESS AS R. H. ARNOLD COMPANY AND GLOBE INDEMNITY COMPANY, *Plaintiffs in Error,*

versus

THE UNITED STATES OF AMERICA FOR THE USE OF W. B. GUIMARIN & COMPANY, *Defendant in Error.*

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

REPLY TO MOTION TO DISMISS OR AFFIRM.

ELLWOOD P. MOREY,
WM. HENRY WHITE,
JOHN I. COSGROVE,
Attorneys for Plaintiffs in Error.

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IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

REPLY TO MOTION TO DISMISS OR AFFIRM.

Plaintiffs in error deny that the writ of error was taken for delay only or that the questions on which the decision of the cause depend are frivolous.

On the contrary, they show that, as shown by the brief for defendants in error and the following, the

questions involved are serious and involve the question of jurisdiction of the courts of the United States, conflicting decisions of the Court of Appeals of the District of Columbia in the case of Arnold vs. Thompson & Spear Company, 279 Fed. 307, and the Circuit Court of Appeals in this case (R. 148) on identical facts; the failure of the Circuit Court of Appeals to properly apply the decision of this Court in the case of the United States vs. American Bonding Company, decided by this Court on December 12, 1921, as to trial by jury and other matters of substantive law, including the failure of the District Court and the Circuit Court of Appeals to follow the decisions of the State of South Carolina in matters of pleading and evidence.

(Note: The short time between the writer's return from vacation and time for filing answer to motion to dismiss has made it impossible to make the following comply with the rules governing briefs. It shows the nature of the case and the questions involved. Brief under the rules will be filed.)

Ellwood P. Morey,
Wm. Henry White,
John I. Cosgrove,
Attorneys for Plaintiffs in Error.

STATEMENT.

R. H. Arnold, trading as R. H. Arnold Co. (plaintiff in error), contracted with the Bureau of Yards and Docks, Navy Department, to construct a warehouse in the Navy Yard at Charleston, South Carolina. He gave bond under the Public Works Act (Act of Congress of the 13th of August, 1894, 28 Stat. L., chap. 283, p. 278, as amended by act of February 24, 1905, 33 Stat. L., chap 778, p. 811) with the Globe Indemnity Company (appellant in error) as surety. Guimarin & Co. (defendant in error) claims to have entered into a sub-contract with Mr. Arnold and sued him and the indemnity company upon this bond, in the District Court of the United States for the Eastern District of South Carolina, at Charleston. Other sub-contractors intervened (R. 149), but no testimony was offered in their behalf. Verdict was rendered for Guimarin & Co. against both defendants for $9,035.59 (R. 36), which the order of judgment (R. 9) shows was made up of the sum of $7,693.31, with interest from December 19, 1918. Final judgment (R. 11) was for $65,190, the full penalty of the bond, with $54.11 costs. The Circuit Court of Appeals in its opinion made it clear that this judgment for the full penalty of the bond was to be discharged by the payment of $7,693.31, with interest from December 9, 1918, and with costs of $54.11. The order of judgment (R. 10) also referred the cause to a master to take proof of the claims of intervening creditors with directions to report the testimony and the master's conclusions of law and fact. The Circuit Court of Appeals modified this order as to intervening creditors in these words (R. 152):

> "The judgment of the district court directing the reference to a master to pass upon the claims of the several petitioners, should be modified, and a jury trial awarded, to determine in a single trial the amounts due the several petitioners."

Further facts in more detail will be found under the following several headings:

ACCEPTANCE—CONFLICTING DECISIONS.

The Circuit Court of Appeals, in this case, and the Court of Appeals of the District of Columbia, in the case of Arnold v. Thompson & Spear Co., 279 Fed., 307, have rendered opposite decisions upon the same facts. U. S. v. Robeson, 9 Pet. 319, 327, was cited to both, followed by the Court of Appeals and not referred to by the Circuit Court of Appeals.

The sub-contracts sued upon in each court were upon the same printed form. Paragraph "second" thereof says (R. 5):

> "Second: That the General Contractor will, in consideration of the said covenants and agreement being strictly performed and kept by the said sub-contractor, as hereinabove mentioned, well and truly pay, or cause to be paid, unto the said sub-contractor the said sum of money above mentioned as the sub-contract price.
>
> In the Manner Following: In payments on the first of each month as the work progresses amounting to ninety per cent of the value of the completed work, as based on the above contract price, and the remaining ten per cent thirty days after the completion of this sub-contract and acceptance of same by the above named owner or architect."

The opinion of the Court of Appeals, pp. 309, *et seq.*, says that Mr. Arnold had a sub-contract with the corporation to do the plumbing and related work for $3,800.00, which was to be paid as follows:

> "On the 1st of each month as the work progresses * * * 90 per cent of the value of the completed work as based on the above contract price, and the remaining 10 per cent 30 days after the completion of this sub-contract and acceptance of the same by the above-named owner or architect."
>
> * * * "No doubt Commander Burrell had sufficient knowledge to enable him to speak as to the performance of the work, if that was the proper way to establish its performance; but it was not. The contract provided another way, and that should have been followed. The Supreme Court of the United States said a long time ago that:
>
> > 'Where the parties in their contract, fix on a certain mode by which the amount to be paid shall be ascertained, as in the present case, the party that seeks an enforcement of the agreement must show that he has done everything on his part, which could be done, to carry it into effect. He cannot compel the payment of the amount claimed, unless he shall procure the kind of evidence required by the contract, or show that by time or accident he is unable to do so.' United States v. Robeson, 9 Pet. 319, 326, 9 L. Ed. 142.

Cases supporting the same view of the law are Kihlberg v. United States, 97 U. S. 398, 24 L. Ed. 1106; Sweeney v. United States, 109 U. S. 618, 3 Sup. Ct. 344, 27 L. Ed. 1053; George A. Fuller Co. v. B. P. Young Co., 126 Fed. 343, 61 C. C. A. 245; Bush v. Jones, 144 Fed. 842, 75 C. C. A. 582, 6 L. R. A. (N. S.) 774. There is no claim here that

the corporation was prevented by time or accident from producing the necessary evidence.

If the work in question has been accepted by the Navy Department or by the Bureau of Yards and Docks, as the contract requires, there should be a record of it, and there should be no difficulty in proving that record by competent evidence. It has not been proven in this case, and therefore the court erred in not sustaining the motion to peremptorily instruct the jury to return a verdict for Arnold.

For this reason, the judgment is reversed, with costs, and the case remanded, with instructions to grant a new trial."

Our brief in the Circuit Court of Appeals said (Record citations, only, changed):

"There is no proof of progress. There is no proof of acceptance by the United States (the owner) nor by the Bureau (the architect). Witness Guimarin said the sub-contractor did all the work according to the specifications. Objection was overruled and exception allowed (R. 20). It was ground VI of defendants' motion to direct (R. 163. Assignments of Error Nos. 4 (n) and (w) cover this (R. 160). 'Liquidated damages' letter of April 16, 1920 (R. 47), shows the work was not finished and the September voucher deducted $6,457.50 for work the Government claims was not finished—evidently the same. Mr. Arnold agreed to pay when two things had happened—when the work, done as specified, had been accepted. Then only could Mr. Arnold get his pay from the Government. By this acceptance, only, could controversy be avoided as to whether the sub-contract work was done as specified. Witness Guimarin gave his opinion, only, under his own reading of the contract that the work was done, but neither he nor any one else said it was ever accepted.

U. S. v. Robeson, 9 Pet. 319, 327;
Sullivan v. Susong, 30 S. C. 323;
Sullivan v. Byrne, 10 S. C., 122;
Power & Co. v. Guarantee Co., 83 S. C., 100."

JURISDICTION.

The suit was brought under the Public Works Act on November 6, 1920, and the amended Complaint, filed November 20, 1920, says (R. 2):

> "That the contract between the United States Government and the defendant, R. H. Arnold, has been completely performed and finally settled, and final settlement and payment on the account of the said R. H. Arnold was authorized on the 17th day of April, 1920, and that more than six months and less than one year has elapsed since such completion and final settlement, and the United States has never entered suit on said bond."

The answer of each defendant says (R. 7, 8):

> "This defendant admits that the contract between the United States Government and him has been completely performed. He denies that final settlement and payment on account of the said R. H. Arnold was authorized on the 17th day of April, 1920, or at any other time and denies that more than six months or any other time and less than one year or any other time had elapsed since such completion and final settlement or since such final settlement and admits that the United States has not entered suit on said bond. This defendant says that the court is without jurisdiction because no final settlement has been made by the United States under said contract."

The Public Work Act authorizes suit on the bond by the United States within six months from completion

and final settlement of the contract and further provides:

> "If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit * * * be furnished with a certified copy of said contract and bond upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States * * * against said contractor and his sureties, and to prosecute the same to final judgment and execution: Provided, That * * * it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract and not later."

Plaintiffs in error contend that no "final settlement" was made prior to September 20, 1920 (if ever) and that this suit, commenced within six months (November), is premature; because the Supreme Court has said that

> "This act created a new right of action upon terms named; and hence that an action brought before six months had expired from the time of completion and final settlement of the contract 'could not be sustained.' "
>
> Ill. Surety Co. v. U. S., 240 U. S., 214, 217;
>
> U. S. ex rel. Texas Portland Cement Co. v. McCord, 233 U. S., 157.

What is meant by "final settlement" was also adjudicated in the Illinois Surety Co. case, as follows:

"* * * We think that the words 'final settlement' in the act of 1905 had reference to the time of this determination when, so far as the government was concerned, the amount which it was finally bound to pay or entitled to receive was fixed administratively by the proper authority. It is manifestly of the utmost importance that there should be no uncertainty in the time from which the six months' period runs. The time of the final administrative determination of the amount due is a definite time, fixed by public record and readily ascertained."

Baker Contract Co. v. U. S., 204 Fed., 390;
Stitzer v. U. S., 182 Fed., 513.

The whole of the evidence is: 1, a letter from the Public Works Officer of April 20, 1920, to Mr. Arnold enclosing final voucher and quoting a letter from the Bureau to the Public Works Officer of April 16, 1920; 2, another of September 20, 1920; 3, thirteen monthly vouchers and a final voucher numbered fourteen; and 4, the testimony of the Public Works Officer. These are now considered.

1. The letter of April 20, 1920, is chiefly relied upon as showing final settlement on that day or on the date (April 16, 1920) of the letter of the Bureau therein quoted. This letter says that the Bureau says (R. 47) that:

"Liquidated damages * * * amounting * * * to $14,850 will be deducted from its stipulated price. Final payment under the contract on this basis is authorized."

Literally this letter says that the Bureau says that "liquidated damages for delays amounting to $14,850 will be deducted from the contract price of $217,300 and final payment of the balance of $202,450 is author-

ized. In so far as it purports to be an "administrative determination with respect to the amount due" (Ill. Surety Co. v. U. S., *supra*) it says that the Bureau has fixed the amount of the liquidated damages and asks for payment of another item of $216.10 and nothing else; and that is all that was done on April 16 or April 20. No other "record" was produced.

2. The vouchers are explained by the "General Provisions" of the contract as follows:

> "28. Schedule of prices.—Before the first payment becomes due the contractor shall submit to the officer in charge an itemized schedule of prices on prescribed forms furnished by the officer in charge. The officer in charge will check such schedule and forward it to the Bureau of Yards and Docks with his recommendation and the schedule, after it has been approved by the Bureau, will govern the preparation of monthly estimates. * * * The prices for material used in the permanent structure shall be the actual current market value as nearly as may be ascertainable. The difference between the total of the schedule of prices prepared as above indicated and the contract price shall be distributed among all the items of the schedule so that the total of the approved schedule shall in every case equal the total contract price. When the contract or any part thereof is based on unit prices and estimated quantities, these quantities and unit prices shall be employed in the schedule. Whenever the contract price is increased or decreased by supplementary agreement or order, the schedule of prices shall be amended to conform to the increased or decreased contract price." (* * * irrelevant provisions are omitted.)
>
> "29. Payments and reservations.—Vouchers will be prepared by the officer in charge of the

work as soon as practicable after the end of each month covering his estimate, according to the schedule of process, of all material delivered, material worked into place and work done to date. From such gross estimate will be deducted the next previous gross estimate, if any, and 10 per cent of the difference unless otherwise specified. The contractor shall certify to the correctness, justness, and non-payment of said vouchers, after which they will be forwarded to the Bureau of Yards and Docks for approval and for reference to the Paymaster General of the Navy for payment by check. Upon the completion of the contract the balance due on account thereof will be covered by similar vouchers, subject to any credits in favor of the Government: Provided, That the contractor shall first execute and deliver a final release to the Government, in such form and containing such provisions as shall be approved by the Navy Department of claims against the Government arising under or by virtue of the contract."

The contract between Mr. Arnold and the United States and these "general provisions" forming a part of it were omitted from the record. The record, page 19, shows that the contract, bond and specifications were admitted in evidence and marked "Exhibit 17," which purports to be copied on page 46; but the bond only is copied and the contract and specifications are omitted inadvertently. These must be supplied in the proper method.

That the items were numbered before the work was performed is shown by the monthly vouchers; *e. g.*, we find "items" 1, 2, 2a, 7 and 9, only, on the first voucher (R. 135); and voucher 2 adds "items 3, 8a, 11, 12 and 42 only (R. 123).

The total of the estimates of work done under each

item, when voucher 1 was prepared, is the total of voucher 1 (R. 135), and after deducting the 10 per cent reservation under the contract, the balance is the amount owing. The second voucher (R. 133) carries the estimate of work done under each item up to that time, including the work covered by the first voucher, and the total is called the "total gross estimate." From this is deducted the previous gross estimate, ten per cent reservation of the balance and the sum remaining is owing; and so on through subsequent vouchers. Each "item" grows until it equals its original estimated cost; *e. g.*, Item 38, elevators, appears first on voucher 8 (R. 101) as delivered, which completed the item, and the same total is in each later voucher. Item 38a, for placing the elevators, appears in voucher 9 (R. 95), with estimated cost of $300, 45 per cent completed and $135 allowed. Voucher 10 shows 75 per cent; voucher 11 shows 90 per cent, and voucher 12 and subsequent ones show 100 per cent and the total allowance. When completed in voucher 14, the total of these "items" equals the contract price of $217,300 (R. 52).

As these vouchers are the only means disclosed in evidence by which the United States fixed the amount owing the contractor, it is important to note that voucher 13, dated January 2, 1919, contained a total of these "items" of $216,440 (R. 60). The next (No. 14—Final Voucher) was not made up and forwarded until September 20, 1920, and the total is $217,300, the stipulated or contract price (R. 52). This difference of $860.00 is neither "fixed" nor "determined" nor explained anywhere else.

The contract (par. 17) also gave the United States the right to make "*changes*" by increasing or decreas-

ing the work, the decrease or increase in the compensation to be fixed by the United States—by the officer in charge or by a board of not less than three officers as the price was less or more than $500.00. Eight of these "changes" were ordered and lettered "A" to "H" inclusive, to distinguish them from the numbered "items" of work specified in the contract, and they were kept separate on the vouchers.

"Change A" began with $352.50 on voucher 4 (R. 123) and became $472.50 on voucher 8 (Aug. 1, 1918, R. 102), and so appears in each subsequent one. "Change B" also began with voucher 4 (R. 123), grew to $2,858.83 on voucher 11 (Nov. 1, 1918, R. 83), and so appears on each subsequent one. "Change C" began with voucher 8 (R. 102), grew to $259.90 on voucher 12 (Dec. 2, 1919, R. 68), and so appears subsequently. "Change D" began on voucher 11 (R. 84), became $4,903.70 on voucher 12 (Dec. 2, 1919, R. 69), and later appears the same. "Change E," a decrease of $6,225, was fixed in voucher 12 (Dec. 2, 1918, R. 69), as was also "Change F," an increase of $328.35, in voucher 12 (Dec. 2, 1918, R. 70).

"Change G" an increase of $742.50 and "Change H" a decrease of $6,457.50 appeared for the first and only time in Voucher 14—Final Voucher, forwarded September 20, 1920 (R. 48). The evidence discloses no other time nor manner of "determining" these amounts. This makes the action premature.

Another item appears on the Final Voucher (September 20, 1920), as follows (R. 53):

> "Amount due contractor representing difference between bid price and purchase price of X structural and reinforcing steel authorized by Bu. Y. & D. Ct. 2469, Nov. 4, 1918."

It is not contended that on November 4, 1918, the sum of $3,467.08 or any other sum was fixed; on the contrary, the "difference" was in the price per pound and the number of pounds could not be known until the work was done. The Public Works Officer said he had made a computation prior to September 20, 1920, but if he did he kept it to himself. It was not sent to Arnold & Company nor to the Bureau and is not in evidence. Until this sum was "determined" and taken into the account on September 20, 1920, there could be no "administrative determination" of any amount the United States was "bound to pay."

Arnold & Company used cement belonging to the Navy Yard. In various vouchers up to and including No. 13 (Jan. 2, 1919), he is charged with cement, credited with sacks returned and the balances are deducted from the sums owing. The aggregates on the 13 vouchers are: Cement, $21,825.74; sacks returned, $3,375.00. Voucher 14 (Sept. 20, R. 53), shows: Cement, $23,157.80; sacks returned, $3,590.00. There is no evidence that these new amounts were "determined" by anyone prior to September 20, 1920. The differences are—for cement, $1,332.06; for sacks, $215.00; a net total of $1,117.06, affecting the balance owing.

Two small items on Final Voucher 14 are significant. The item of demurrage, it is affirmatively shown by this voucher, was not "authorized" until September 7, 1920 (R. 54). While the Public Works Officer had asked for the overdraft of $216.10, by his letter of April 20, 1920 (R. 48), he was not "authorized" finally in respect to it until September 7, 1920 (R. 54). *Since these items appear on Voucher 14, it could not have been finally prepared until after September 7, 1920,* and until then no one had "determined" the amount

owing. Until all of the items were "determined" there was no "final settlement;" and it is not safe to say that the failure to determine a small one is immaterial, for what is a small one? Is $19.00 small? Then how about $742.50, or $6,457.50?

The Supreme Court has said that the time limit fixed by this Act is more than a statute of limitation. It is a right given upon condition—a question of jurisdiction, but if one sues on a promissory note one little day too late, his action is lost.

3. The letter of September 20, 1920, to Arnold & Company (R. 48) reads:

> "1. There is enclosed herewith final voucher No. 14 covering balance due you, including reservations under the above contract and deducting liquidated damages and other claims of the government as authorized by Bureau of Yards and Docks letters No. 2469 of April 16, 1920, and September 7, 1920. There is also enclosed in quadruplicate, final release of the above contract. It is requested that you sign the original Voucher No. 15 as well as three copies of the final release and return the came to this office where the voucher will be placed in the proper channel for prompt payment. You may retain the green copies of the voucher and the fourth copy of the final release for your files."

This is the first and only time that any one said officially or otherwise, or "fixed" by "public record" or off the record, what is the "balance due" or "amount due," or the amount "which it (the Government) was bound to pay." Evidence fails to show any approval at any time by the "proper channel" or by "Bureau of Yards and Docks" (contract, par. 29). The "method of settlement" (R. 22) contemplates written

"instructions for the preparation of final voucher," but they are not produced and the date is not shown, unless it be September 7, 1920 (R. 54), and this is within six months of the bringing of the suit in November. The "written report to the Bureau of Yards and Docks, that the work is completed" and asking "the Bureau's instructions for the preparation of final voucher" (R. 22) was not produced and its date is not shown.

4. The testimony of the Public Works Officer is this: He went on duty at Charleston, January 5, 1920 (R. 24), and is in custody of the records (R. 23). He produced Exhibit 18, which is a mere copy of his letter to Mr. Arnold of April 20, 1920 (R. 24, 47), and was objected to on that ground and that no notice was given to produce the original (R. 24). He had a retained copy of the final voucher and said he would "furnish additional copies of the final voucher showing exactly all credits allowed" (R. 27). Before September 20, 1920, monthly vouchers had been sent to Mr. Arnold, but none "for the purpose of a final voucher" (R. 27). The witness then said (R. 29, *et seq.*), that the first three or four pages of the final voucher forwarded September 20, 1920, were "typed in April" and the last page in September. After that there was no revision of the *basis* of settlement. He called on Mr. Arnold to make good sums for utilities furnished, reported the facts to the Bureau with recommendations that he be authorized to make deductions on the final voucher and the Bureau approved by letter of September 7, cited on the last page. Mr. Arnold did not have copies of these letters, but witness had demanded the sums from Mr. Arnold. These deductions were "less over-expenditures on contractor's

special deposit (authorized by Bu. Yd. & D. let. 2469, Sept. 7, 1920), $216.10. Less demurrage chargeable to contractor paid by Supply officer (authorized by Bu. Yd. & D. let. 2469, Sept. 7, 1920), $19.00."

But the witness also said the "basis" of the special deposit of $216.10 was in the contract and not in the April 16 letter (R. 33); that changes G and H and the steel item do not appear on vouchers previous to September 20 (R. 31) and said (R. 34):

> "Commander G. S. Burrell (answers from the floor). The items of the contract require the contractor to furnish everything. Then the credit was taken, for the cement, month by month, as furnished; and I find entries on a number of vouchers of the several amounts, including Feb. 3 voucher, and Feb. 28,—July, August, September, October, November, all 1918."
>
> Court: In which the cement is mentioned. Not the other, was it?
>
> A. The other was for structural steel. It was specified before letting the contract that the contractor should name the price. quotation, which he had obtained from the manufacturers, and on which his proposal to the Government was based. That the Government reserves the right to either furnish him the steel in kind, and thereby give him credit for the steel, or else to instruct him to buy his steel in open market; in which case the Government would pay him the difference between the original quotation obtained from the manufacturers, and the price he actually had to pay for the cement (steel). That would protect the contractor on a rising market. The Public Works Officer was instructed in the beginning that that could be accounted for in the final voucher; so that that item occurs in the final voucher only.

Court: Was it considered in the memorandum fixing the amount, of the 16th of April, 1920?

A. No, sir. That was something that had been determined in letting the contract, and its status was not affected by the April contract. (Memorandum.)

Mr. White: But the amount of it was fixed in the final voucher for the first time?

A. Yes, sir.

Mr. McDonald: Commander, did the item of structural steel—had that item been actually computed in your office on April 16?

A. It had been."

The burden of proof is upon the plaintiff to show by matter of public record and by the best evidence that more than six months and within one year prior to filing suit on November 6, 1920, the Government determined the amount it was bound to pay Mr. Arnold. September 20, 1920, is too late, and until that day when the final voucher was sent, no such amount has been shown by any record nor by the best evidence for these reasons:

(a) While the witness *says* the first pages of the final voucher were "typed" in April, it was never approved by the Bureau as required in paragraph 29 of the contract, nor as required by the "method of settlement" as stated by him (R. 22).

(b) His "written report" is not in evidence; neither is the action of the Bureau, unless that be the quotation from the letter of April 16, 1920 (R. 47). This is only a copy of the letter to Arnold. The original was not called for and was inadmissible, as hereafter shown.

(c) The letter, if it be in evidence, fixes one item of charge—for liquidated damages—and does no more.

(d) His testimony shows careful selection of words. He says the *basis* of settlement was fixed, etc., yet he admits that "Change G," "Change H," steel, special deposit and demurrage items appeared in the final voucher for the first time and that the last two were not "authorized" until September 7, 1918. While he says that the steel item is fixed by the contract and that he had the computations in his office, "the amount of it was fixed in the final voucher for the first time," and no action by the Bureau is shown.

The totals not fixed, therefore, prior to September, are:

Totals of original "items" changes from $216,440, Jan. 2, 1919, to $217,300, Sept. 20, 1920 (R. 60), an increase of.....	$860.00
(Note: No intervening date is shown when this was fixed.)	
"Change G" appears for the first time Sept. 20, as fixed at.....	742.50
"Change H" appears for the first time Sept. 20, as	6,457.50
(Note: The contract required these two sums to be fixed by Boards of Officers. These awards are not shown nor are the dates given.)	
Steel, computations on which were never disclosed nor approved, and the amount of which was fixed in the final voucher for the first time (R. 35).....	3,476.08
Totals for cement changed from $21,825.74 total up to voucher 13 (Jan. 2, 1919), to $23,157.80 on September 20 (R. 53), and no approval nor previous computation shown, a change of.....	1,332.06

Total for cement sacks returned, same facts, a change of	215.00
Over-expenditures of special deposit, not "authorized" until Sept. 7, and authority not shown by best evidence.....	216.10
Demurrage, not "authorized" until September 7, and authority not shown by best evidence	19.00
Total Changes.....	$13,318.24

The total found owing Mr. Arnold in the final voucher is only $4,725.24 (R. 54). At no previous time was any amount fixed or determined by anyone, nor, so far as the record shows, was ever attempted to be fixed. Until each of the above items were determined, the amount owing could not be determined.

It is conclusively established therefore—

1. "The time of this determination when so far as the government was concerned, the amount which it was finally bound to pay," was September 20, 1920, and within six months of the bringing of this action.

2. No amount was fixed proir to that day.

3. Before September 7 two items had not been authorized (utilities $216.10 and demurrage $19.00).

4. Before September 20, no date is shown when changes G and H were fixed ($742.50 and $6,457.50) although fixed of record by awards of Boards under the contract, not in evidence; therefore September 20 is the earliest date shown when these amounts were "determined."

5. Before September 20, no date is shown when the amount of allowance of Mr. Arnold's claim for steel was fixed. Witness Burrell says that he had the computations in his office; but this is one of the things he had to report to the Bureau and have approved (R.

22). Neither his report nor the Bureau's action is in evidence nor is the date of either given. He said the first three or four pages of the voucher were "typed" in April, but typing a voucher at the Navy Yard is not approving the amount by the Bureau and no date of approval of anything by the Bureau is shown except liquidated damages on April 16 and special deposit and demurrage charges on September 7. The letter of September 7 is not in evidence.

6. The total of original items was not allowed, by any "record" or word of testimony, prior to September 20, when for the first time it equals $217,300, the contract price. The largest "amount" prior was $860.00 less.

7. The same is true for the charges for cement and credits for sacks; and the amounts involved are $1,332.02 and $215.00.

Putting it another way, voucher 13 showed that on December 31, 1918, the United States owed Mr. Arnold $981.76 (which it paid) plus 13 reservations amounting to $17,928.12, and reserving on each voucher the liquidated damages question. These damages were fixed April 16, at $14,850.00, which left $3,478.12 owing until September 7, when $216.10 and $19.00 were charged and this is the only possible "amount" shown to have been "fixed by public record" until September 20 when the other claims and charges appear in the "final voucher" affecting a total of $13,318.24 one way or another, and finally fixing $4,725.24 as the amount the United States was bound to pay; and *there is no record in evidence that even this sum was ever approved by the Bureau.*

Motion of defendants to instruct the jury to return a verdict for defendants on this ground was overruled

with exception. Verdict for plaintiff was directed. Exception was granted and error No. IV (w and x) assigned (R. 163 and 164).

We also believe the court erred in trying this question of jurisdiction, which is in abatement, with the case on its merits.

> *Kirven v. V. C. C. Co.*, 145 Fed. Rep., 288;
> *Greensboro v. So. Paving & Con. Co.*, 168 Fed. Rep., 880.

Cases cited in brief for defendants in error follow:

In *U. S. v. Robinson*, 130 C. C. A., 434, the Court said:

> "The date was, therefore, fixed relatively to complete performance of the contract and *final settlement thereof*. We take it that these italicized words refer to the time when the proper government officer, who has the final discretion in such matters, after examination of the facts, satisfies himself that the government will accept the work, as it is, without making any claim against the contractor for unfinished or imperfect work, damages for delay or what not and records that decision in some orderly way."

The letter of April 16, 1920 (R. 47), said:

> "The building was substantially completed November 30, 1918, so as to allow the use of it by the Government, and that date will accordingly be treated as that of completion for the purpose of the damage clause, although the work was not then entirely finished and certain items of it were not substantially eliminated from the contract."

That fixed the liquidated damages, only. After this other items aggregating thousands of dollars were fixed for the first time.

From the Robinson case the following is quoted from brief for appellee in error, p. 13:

> "Remembering that the purpose of the statute in this regard was to protect the United States, it follows that there is no merit in the contention that the sub-contractor must wait to begin his action until disputes as to completion are finally settled, notwithstanding that the government on its part is entirely satisfied and approves the final settlement of the contract."

September 20, 1920, was the first time Mr. Arnold was told what was due him and was the first opportunity offered him to "dispute" anything. We have never contended and do not now contend that his conduct has anything to do with it.

In *U. S. v. Title Guaranty Co.*, 166 C. C. A., 320, the final voucher was sent (as here) to the contractor and then forwarded to the Bureau and there approved. *The date of this approval by the acting chief of the Bureau was held to be the date of final settlement.* In the case at bar it is not shown that the final voucher was ever sent to the Bureau, nor that it was ever approved there, but it is shown that it was not completed until September—two months prior to filing this suit.

In U. S. v. Arnold, 268 Fed., 130, the Court found that the building was completed July 30. The final voucher, delivered August 15, showed July 30 as the "date of delivery of service" just as the final voucher in this case shows April 17 as the "date of delivery of service." This may or may not be the date of *com-*

pletion of the work. It is not the day of "final settlement." In the Connecticut case the court found only trivial items of debit changed by the Bureau after July 30 and ignored them in plain English. Here the items of debit and credit after April 17 involve thousands of dollars.

Under the head "Department Construction" cases are cited to the effect that weight will be given by the Court to departmental construction of a doubtful statute. This Court has construed this statute, and a Bureau cannot, by saying a certain day is the day it finally settled a matter, make it so, where the plain facts show it settled but one on that day and left many unsettled. It is not a question of construction. It is a question of undisputed fact.

Neither can this question be decided by answering the question of whether Mr. Arnold is hurt. The consent of all parties could not give the court jurisdiction within the six months, even if it were admitted that the United States had no claim.

U. S. v. McCord, 233 U. S., 157, 159, 163, citing Stitzer v. U. S., 105, C. C. A., 51, 182 Fed., 513.

Nor can we now be concerned with Guimarin's condition. The courts of general jurisdiction in the District of Columbia have been and are open. He sought this special, limited procedure and at the trial defendants were committed to September 20. He could have brought another action within the limited period.

THE BEST EVIDENCE.

Exhibit 18 (R. 47) is a copy of a letter of April 20, 1920, from witness Burrell to Mr. Arnold. No notice to produce was given, objection was overruled, exception allowed and the copy was admitted (R. 23).

This copy when produced also shows that it copies part of a letter of April 16, from the Bureau to the Yard at Charleston, the original of which was produced. (R. 23.)

Assignment of Error No. IV (p) R. 47 and 161) covers this and the rule is elementary.

Greenleaf on Ev. Sec. 84, *et seq.;*
Main v. Aukam, 4 App. D. C., 51;
Mfg. Co. v. Iron Works, 75 S. C., 340.

This is the writing chiefly relied on to prove "final settlement" which the verdict says was made April 16, 1920 (R. 9).

Witness Heyward said (R. 14) that a copy of Exhibit No. 2 (R. 37) was mailed to Mr. Arnold; that is, he prepared it, signed it and he presumed that his bookkeeper or stenographer mailed it—he didn't; but he received a reply and this is Exhibit 3, purporting to be signed by Rosenheim as office manager (R. 38). No signature was proven; objections were overruled, exceptions allowed and the writings admitted (R. 14). Assignment of Error No. IV (f) covers these (R. 158). The record shows no notice to produce the original of the statement; no proof of signature of Rosenheim nor of his authority to do anything; the letter says he has "no authority to act in the matter"; and these are the basis for the court's finding that an account stated has been proven (R 20) and without which the plaintiff has not proved the case on the merits.

Exhibits 4, 6, 8 and 10 are called carbon copies of alleged letters from Guimarin & Co. to Mr. Arnold. The record shows neither proof of mailing any of them nor notice to produce nor call for originals 4, 6 or 8, nor that they are even copies. The replies (Exhibits 5, 7, 9 and 11) are not signed by Mr. Arnold.

There is no proof of the signatures of the alleged senders, Rosenheim, Gunezy and Stum, nor of the authority of either of them. Assignments of Error Nos. IV (g) and IV (h) cover them.

Exhibit 12, witness Heyward said is a copy of a letter and estimate he sent to Mr. Arnold. Witness did not mail it (R. 17). Error No. IV (i) is assigned (R. 159).

The witness said that Exhibit 13 is signed by Ralph E. Homan (R. 17) who is "connected with the R. H. Arnold Company."

> Mr. McDonald: What was his connection with them?
>
> A. I couldn't tell you that. He was in Charleston here for quite a while, on construction work, I presume.
>
> Objection.
>
> Court: He was connected with the work here?
>
> A. Yes, sir.
>
> Court: You had correspondence with him as such?
>
> A. I had correspondence with him.

This was all the evidence. Error No. IV (j) is assigned (R. 159).

Exhibit 14, seven letters, six of which purporting on their faces to be signed by Rosenheim as office manager of defendant Arnold, were admitted without proof of either signature or authority (R. 18). The seventh purports to be signed by "H. G. Lehrbach, Assistant Engineer, U. S. Navy." Error No. IV (k) covers this (R. 159).

Exhibits 15 and 16 are exactly like Exhibit 14 except the supposed signer is Homan; there are ten letters and the error is No. IV (l).

STATED ACCOUNT.

The Court held (R. 20):

> "Court: (To Mr. White). As at present advised, I think I will charge the jury that your non-objection to the amounts binds you. He sent you a complete statement of the accounts one year and eleven months before action was brought. Under the general rule, that is an acceptance, unless you objected to in some way. The rule is two years, but not limited—it depends somewhat on circumstances. I think the twenty-three months, and he had to bring a suit, would be sufficient admission."

The statement is Exhibit 2 (R. 37) which witness Heyward said (R. 14) was a carbon copy (R. 15) of a statement he signed and which he presumed his bookkeeper or stenographer mailed; but he didn't mail it. He received Exhibit 3 (R. 38) purporting to acknowledge receipt but not signed by Mr. Arnold, no signature being proved and the author disclaiming, in the letter itself, "authority to act in the matter." Exhibits 4 to 9 show (even if admissible) that matters relating to the account had not been determined, that information from and action by the Government (R. 38) were prerequisite and the proof ends May 16, 1916, with Arnold & Co. saying it could not say whether the account is correct for these reasons. It is not shown that acceptance of the work by the Government was made. The court was in error in finding acceptance of the account by twenty-three months' silence. Either the statement and letters are inadmissible, which leaves no proof of an account stated, or the letters show affirmatively that there was no acceptance or im-

plied agreement. If Mr. Arnold is bound by letters written by alleged clerks or bookkeepers, he is entitled to the disaffirmance shown in their letters.

Charlotte O. & F. Co. v. Hartog, 85 Fed. 155;
Wakefield v. Spoon, 100 S. C. 106.

The following is elementary:

> "The rule is the same in principle at law; a settled account is only *prima facie* evidence of its correctness. It may be impeached by proof of unfairness, or mistake, in law, or in fact."
> Perkins v. Hart, 11 Wheat 256.

> "When the account is admitted in evidence as a stated one, the burden of showing its incorrectness is thrown upon the other party. He may prove fraud, omission or mistake, and in these respects he is nowise concluded by the admission implied from his silence after it was rendered."
> Wiggins v. Burkham, 10 Wall. 129, 132.

This burden was taken from our shoulders by plaintiff's proof which shows affirmatively mistakes in debit items for changes C, D, and F (R. 37). He did not plead and his counsel did not assert a stated account. He did undertake to show the "value" of these changes by showing the amounts allowed by the Government to Mr. Arnold and his counsel said (R 26):

> "Mr. McDonald: The purpose of this line of inquiry is to show the amount which the Government allowed Arnold on these particular changes, with a view to showing that our estimates were reasonable and fair valuations."

We have shown elsewhere that the statement, complaint, verdict and judgment contain and are based on

the amounts awarded to Arnold by the Government whereas the amounts owing plaintiff by Mr. Arnold are necessarily different, because Mr. Arnold is entitled to estimated actual cost at the time of doing the work plus ten per cent profit, while plaintiff is entitled to fair valuations based upon the sub-contract price for the whole of the original sub-contract work. The only other evidence is that witness Guimarin said that the charge of $3,383.50 (R. 37) is "a fair value for that work" as of May 11, 1918, when he made up an estimate (R. 40, 21). Alleged letter of authority to do the work says (R. 41):

> "Compensation for same will be made you in accordance with the original contract between us."

There appears no proof of value of the charges for changes C and F except the sums allowed by the Government to Mr. Arnold. This is a clear mistake.

VARIANCE.

The *complaint claims* for additional work its value "fair valuation" (R. 2). The *right proven* is to "fair valuations, using the contract price on the whole of the sub-contract work, as a basis for computing such valuations" (R. 5, par. "Third"). The *sum proven* and included in the directed verdict is the sum allowed Mr. Arnold under his contract with the United States (R. 26, 28). This is a fatal variance, because:

(a) Defendant did not agree to pay plaintiff what he received from the Government; neither did plaintiff agree to accept it nor do the work for it.

(b) The basis of compensation was wholly different. Plaintiff was to receive "value." Defendant was to receive estimated actual cost plus 10 per cent. It was to receive "Fair valuations, using the contract price on the whole of the sub-contract work ($9,950) as the basis." Defendant was to receive "estimated actual cost * * * at the time of such estimate," (Oct. 25, 1919). Fluctuating prices, up or down, affected the price the Government was to pay defendant, but not the price he was to pay plaintiff. Suppose the sub-contract had been for the brick work and the Government had increased the size of the building so that twice as many bricks were required. Plaintiff would have the right, upon performance, to twice $9,950—no more, no less. Defendant's compensation was upon an entirely different basis. It was left to a Board, was subject to fluctuating prices and carried an additional percentage of profit.

The fact that the alleged sub-contract made defendant's contract with the Government and the specifications a part was for the sole purpose of specifying the work to be done and the manner of doing it and does not give plaintiff the right to defendant's compensation, *a fortiori,* when a different compensation to plaintiff is specified in the sub-contract. This is a fatal variance.

Sheehy v. Mandeville, 7 Cranch 208;
Fitzsimmons v. Guanahani Co., 16 S. C. 192;
Hursey v. Surles, 91 S. C. 290.

The only other proof is of "reasonable value" as of the time of doing it and not based upon sub-contract price, and agrees with the allowance to Arnold & Co.

PROOF OF SUB-CONTRACT.

Defendant R. H. Arnold Co's. signature was admitted by him, but that was not admitted by his co-defendant and proof of his signature was necessary to affect the interest of his co-defendant.

Kolb v. Jones, 62 S. C. 193.

The alleged signature of R. H. Arnold Co. purports to be witnessed by F. Golden (R. 7). He did not testify and proof by him was indispensable.

Chamberlayne's Handbook on Evidence, 15th Ed., sec. 569.

Testimony of Cooper, witness to plaintiff's signature, was shown to be unobtainable (R. 12), but absolutely nothing was shown about Golden. His signature was not proven. He seems to have been overlooked.

Swancey v. Parish, 62 S. C., 240;
United Grocery Co. v. Donnelly, 93 S. C., 580;
Merck v. Merck, 89 S. C., 347;
Russell v. Tunno, 11 Rich. Law, 303;
Martin v. Bowie, 37 S. C., 102.

Under the above cases the court will find that the proof of Mr. Arnold's signature was not by the best evidence and further that the witness Heyward, who undertook to identify it, had not sufficient knowledge and he was too uncertain (R. 13). Objections were overruled, exceptions granted (R. 12, *et seq.*) and Errors Nos. IV (c) and (d) were assigned (R. 157).

ONE JURY TRIAL.

Assignment No. 3 says that the Circuit Court of Appeals erred (R. 157):

"3. In affirming the judgment on a jury trial in favor of Guimarin & Company and awarding a new and separate jury trial to determine in a single new trial the amounts due the several petitioners other than Guimarin & Co."

Objection was duly made (R. 11).

While the Circuit Court of Appeals held (R. 152),

"That a jury should have been impaneled to try and dispose at a single trial, of all the petitioners' claims, as well as that of the plaintiffs,"

citing the case of *Miller v. American Bonding Company,* decided by this Court, December 12, 1921, and said that the judgment

"should be modified, and a jury trial awarded to determine in a single trial the amounts due to several petitioners";

nevertheless, what the Court ordered was that

"judgment should be entered in favor of the U. S. for the sum of $65,190.00, the penal sum of the bond referred to, to be discharged by the payment to the said Guimarin & Co. of $7,693.31, with interest from the 19th of December, 1918, until paid, together with costs of $54.11, it appearing that plaintiffs and petitioners' claims combined do not exceed the penal sum of said bond * * * and that the several petitioners upon ascertainment of the amounts respectively due them should be entitled to like judgments, the total judgments, including that of the plaintiffs herein, not to exceed the penalty of the bond.

"The decision of the lower Court as herein modified, will be approved and affirmed."

We have, therefore, a verdict of a jury by direction of the Court in a trial of the claim of the one petitioner, only; a judgment on the verdict; an opinion that this is wrong because the claims of all petitioners should have been tried in one trial before the same jury; that judgment affirmed with direction that a new trial before a new jury be had of the claims of all the other petitioners. This required two trials before two juries and the error is plain.

ELLWOOD P. MOREY,
WM. HENRY WHITE,
JOHN I. COSGROVE,
Attorneys for Plaintiffs in Error.

(28810)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 320.

R. H. ARNOLD, DOING BUSINESS AS R. H. ARNOLD COMPANY, AND GLOBE INDEMNITY COMPANY, PLAINTIFFS IN ERROR.

versus

THE UNITED STATES OF AMERICA FOR THE USE OF W. B. GUIMARIN & COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

MOTION TO DISMISS OR AFFIRM AND BRIEF.

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MOTION TO DISMISS OR AFFIRM AND BRIEF.

Now comes the defendant in error, the United States, to the use of W. B. Guimarin and Co., by its counsel, Frank G. Tompkins and M. G. McDonald, and moves the Court to dismiss the writ of error herein and affirm the judgment of the United States Circuit Court of Appeals for the Fourth Circuit upon the ground that it is manifest that the writ of error was taken for delay only, and that the questions on which the decision of the cause depend are so frivolous as not to need further argument.

The defendant in error further moves the Court in the event that it should desire to hear argument on the questions involved, that this cause be transferred to the summary docket, and there be proceeded with on the ground that the cause is of such character as not to justify extended argument.

The grounds of this motion, the statement of the case and the argument thereon, are more fully set forth in the accompanying brief, all of which is herewith respectfully submitted.

FRANK G. TOMPKINS,
M. G. MCDONALD,
Attorneys for Defendant in Error.

To Messrs. Wm. H. White, Elwood P. Morey, Logan & Grace and Jno. I. Cosgrove, Attorneys for Plaintiffs in Error:

YOU WILL PLEASE TAKE NOTICE that on Monday, the 16th day of October, 1922, at the opening of the Court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for its decision.

Attached hereto, please find copy of the motion to dismiss or affirm, the brief and argument to be submitted in support thereof, and also the motion to transfer this cause

to the summary docket if the Court should desire to hear argument thereon.

FRANK G. TOMPKINS,
M. G. MCDONALD,
Attorneys for Defendant in Error.

The foregoing notice is hereby accepted and delivery of a copy thereof, together with the above mentioned motion and brief, is hereby acknowledged, this ..... day of September, A. D. 1922.

.....
.....
Attorneys for Plaintiffs in Error.

STATEMENT.

On October 3, 1917, R. H. Arnold entered into a contract with the United States to construct a storehouse at the Navy Yard at Charleston, S. C. In accordance with the Act of Congress of August 13th, 1894 (28 Stat. U. S., 278), as amended by the Act of February 24th, 1905, (33 Stat. U. S., 811), he gave bond in the sum of $65,190 with the usual conditions, the Globe Indemnity Company being surety. W. B. Guimarin & Company, in November, 1920, commenced this action under the statute in the District Court against Arnold and his surety, for the recovery of the balance due under a sub-contract for plumbing, heating, roof drains and fire service, alleging that Arnold's contract with the government had been completely performed and was finally settled on April 16th, 1920. Various other sub-contractors and materialmen intervened. The cause was tried in June, 1921, and resulted in the direction of a verdict in favor of Guimarin & Company for $9,035.59, and directing the entry of judgment for the penalty of the bond. It was further ordered that the claims of the various intervenors be referred to the standing master "to take proof * * * and report to this Court upon each of the said claims severally, together with the testimony offered for and

against the same and his conclusions of law and fact thereon."

The case was then taken upon a writ of error, to the Circuit Court of Appeals for the Fourth Circuit, and the judgment of the District Court, insofar as the claimant, Guimarin, was concerned, was affirmed, but so much of the judgment as ordered a reference upon the intervening claims, was set aside under authority of *Miller vs. American Bonding Co.*, 66 U. S. L. Ed., 123. That decision was rendered on December 12th, 1921, subsequent to the judgment of the District Court, and after the cause had been argued in the Circuit Court of Appeals.

ARGUMENT.

Plaintiffs in error reassign as error all of the twenty-six assignments of error that were before the Circuit Court of Appeals, together with four additional assignments, making thirty-two in all. These assignments raise the same questions in different form, and, therefore, in discussing them, we shall follow the grouping adopted by the plaintiffs in error and the defendant in error in the Court below, and as set out in the opinion of Judge Waddill of that Court.

CONSTRUCTION OF ACT.

The construction of the Act of Congress under which this suit was brought necessarily depends to a large extent upon the purpose of its enactment. Its purpose was two-fold, namely, to protect the priority of the United States, and to provide for the prompt payment of laborers and materialmen. *Illinois Surety Co. vs. U. S.*, 240 U. S., 214. Hence, the Act being remedial, its construction should be liberal.

> "The Act is intended to be highly remedial. Its purpose is simple and beneficial. It is to give a remedy to material men and laborers on the bond of the original contractor and a reasonable time to enforce it." *Alexander Bryant Co. vs. N. Y. Steam Fitting Co.*, 235 U. S., 327.

"The purpose of the Act was to provide security for the payment of all persons who provide labor or material on public work. This was done by giving a claim under the bond in lieu of the lien upon land and buildings customary where property is owned by private persons. Decisions of this Court have made it clear that the statute and bonds given under it must be construed liberally in order to effectuate the purpose of Congress as declared in the Act. In every case which has come before this Court where labor and materials were actually furnished for and used in part performance of the work contemplated in the bond, recovery was allowed, if the suit was brought within the period prescribed by the Act. Technical rules otherwise protecting sureties from liability have never been applied in the proceedings under this statute."

Illinois Surety Co. vs. John Davis Co., 244 U. S., 376.

"Statutes are not to be so literally construed as to defeat the purpose of the legislature."

Hill vs. American Surety Co., 200 U. S., 197.

"Such a contract (bond) should be interpreted liberally in favor of the sub-contractor, with a view of furthering the beneficent object of the statute." *U. S. F. & G. Co. vs. Golden Pressed and Fire Brick Co.*, 191 U. S., 416. See also *U. S. vs. Mankin*, 215 U. S., 533.

"The Act and bonds given under it must be construed liberally for the protection of those who furnish labor or materials in the prosecution of public work."

Brogan vs. Nat. Surety Co., 246 U. S. 257.

The question of jurisdiction must, therefore, be determined in the light of the highly remedial nature and beneficent purposes of the Act.

JURISDICTION.

The only question to be determined under this head is whether or not the contract between Arnold and the United States had been "finally settled" six months prior to the bringing of this action. It is conceded that the contract

had been completely performed, but the correctness of the ruling of the District Court and of the Circuit Court of Appeals that the contract was finally settled on April 16th, 1920, is questioned, the contention of plaintiff in error being that there was no final settlement and hence that the action was premature and the Court without jurisdiction to try the same.

Commander G. S. Burrell, U. S. Navy, the Public Works Officer at the Charleston Navy Yard, in charge of the contract in question, testified as follows (p. 22):

> Mr. McDonald: What is your official position? A. I am the Public Works Officer of the Navy Yard Station, Charleston, S. C., and of the Sixth Naval District.
>
> Q. How long have you been in the service? A. Fourteen years next month.
>
> Q. Will you explain to the Court and jury the method of settlement of public contracts as carried on by your department?
>
> Objection. Overruled.
>
> Exception.
>
> A. After the work is physically completed, the Public Works Officer, who is the officer in charge of the contract, makes a written report to the Bureau of Yards & Docks that the work is completed; sets forth the facts and circumstances attending the completion, in reference to unavoidable delays, as far as he can determine, and asks the Bureau's instruction for the preparation of final vouchers and final releases. The Bureau considers that statement in connection with any claims that may have been submitted by the contractor for extra compensation or for extension of time by reason of unavoidable delays. Thereupon, the Bureau of Yards & Docks issues instructions for the preparation of final vouchers and final releases, and instructions as to how much liquidated damages, if any, are to be subtracted for delay in completion. The Public Works Officer prepares the final vouchers and final release in accordance with those instructions; sends that to the contractor, notifying him of the Bureau's instructions. It is then up to the contractor to sign the final voucher and release and return them to

the Public Works Officer. Such voucher is then signed by the Public Works Officer, if signed by the contractor; forwarded to the Bureau along with the original of the final release. It receives the Bureau's approval and signature, is returned to the station and check in payment prepared and mailed by the Disbursing Officer at the Station.

He further testified as follows (p 23):

Court: That is the official record?

Witness: Yes, sir. The original of the instructions from the Bureau to the Public Works Officer. I have a photo-print of the same, which can be compared with the original.

Court: I will take your word for it. That is the exact photo-print? A. Yes, sir.

Exhibit 18, photo-print of letter from Bureau of Yards & Docks to Navy Yard, Charleston, stamped with date April 16, 1920.

Cy-3-Wd- 1-6-21.

2469

NAVY DEPARTMENT
BUREAU OF YARDS AND DOCKS,
Washington, D. C.

April 16, 1920.

From: Bureau of Yards and Docks,

To: Navy Yard, Charleston, S. C.

Subject: Contract No. 2469 (Dept. No. 866), October 3, 1917, of R. H. Arnold Company for general storehouse, Navy Yard, Charleston, S. C.

Reference: (a) P. W. O. letter 2469-4, 12/26/19; forwarded by Comdt.'s indt. 23-2469, 71-4, 12/26/19.

1. The contract, of which a copy was delivered to the contractor October 9, 1917, required performance within 120 days thereafter; that is, by February 6, 1918. The building was substantially completed November 30, 1918, so as to allow the use of it by the Government, and that date will accordingly be treated as that of completion for the purposes of the damage clause, though the work was not then entirely finished and certain items of it were subsequently eliminated

from the contract. The entire delay of 297 days was, it is clear from reference (a), owing to causes for which the contractor is responsible, and accordingly liquidated damages therefor amounting at the rate of $50 a day, to $14,850, will be deducted from the stipulated price. Final payment under the contract on this basis is authorized.

(S) R. S. BAKENHUS,
Assistant to Bureau.

The contention of the plaintiff in error seems to be that there was no final settlement of the contract because (a) the final voucher was not sent to Arnold on April 16th nor (b) was it approved by the Bureau of Yards and Docks.

Commander Burrell testified that the final voucher had been prepared on April 17th, 1920 (pp. 29 and 30), that on April 20, 1920, he wrote Arnold advising him of the basis on which he had been instructed by the Bureau of Yards and Docks to prepare the final voucher and requesting payment of an item of $216 which Arnold owed the Government so that voucher might be forwarded, and requesting advice as to whether or not Arnold was prepared to execute the release on the voucher in accordance with the basis quoted. That he received no reply to this letter, although it was registered and the receipt showed delivery. He further testified that he wrote to Arnold repeatedly in regard to the matter (p. 30). Arnold's failure, therefore, to indicate an acceptance of the basis of settlement effectually put it out of the power of the government to proceed any further.

Nor could there be any approval of the final voucher by the Bureau of Yards and Docks until after Arnold had signed the release which was an integral part of it. Commander Burrell thus clearly puts it: (p. 22.)

"The Public Works Officer prepares the final voucher and final release in accordance with those instructions. It is then up to the contractor to sign the final voucher and release and return them to the Public Works Officer. Such voucher is then signed by the Public Works Officer, *if signed by the contractor;* forwarded to the Bureau along with the original release."

It thus clearly appears that after preparation of the final voucher no further action is taken on the part of the Government until after the contractor signs the voucher and executes the release. If plaintiffs' in error construction of the term "final settlement" is correct, it would put it absolutely within the power of the contractor to postpone indefinitely or even prevent any final settlement of the contract by merely refusing to sign the voucher or release or accepting the basis of settlement. If, as it happens in this case, the contractor had failed to pay his sub-contractors and the amounts of their claims greatly exceeded the amount due him from the Government, he could prevent such sub-contractors from pursuing their remedy under the Act against him and his surety by simply refusing to sign the voucher or to agree to a settlement.

A full and clear construction of the Act and its purposes and of the phrases "complete performance" and "final settlement" will be found in the case of *Illinois Surety Co. vs. United States*, 240 U. S., 214. In that case, the Court through Mr. Justice Hughes, said:

> "It was evidently the purpose of the Act of 1905 to remedy the defect in the Act of 1894 by assuring to the United States adequate opportunity to enforce its demand against the contractor's surety, and priority with respect to such demand. *Mankin vs. United States*, 215 U. S., 533, 538, 54 L. Ed. 315, 317, 30 Sup. Ct. Rep., 174; *United States ex rel. Brown-Ketcham Iron Works vs. Robinson*, 130 C. C. A., 432, 214 Fed., 38, 39, 40. Accordingly it was provided that if the United States sued upon the bond, the described creditors should be allowed to intervene, and be made parties to the action, but subject 'to the priority of the claim and judgment of the United States.' And it was only in case the United States did not sue within the specified period that the creditors could bring their action. With this object in view—to protect the priority of the United States, and at the same time to give a remedy to materialmen and laborers on the contractor's bond and a reasonable time to prosecute it (*United States use of Alexander Bryant Co. vs. New York Steam Fit-*

ting Co., 235 U. S., 327, 337, 59 L. Ed., 253, 257, 35 Sup. Ct. Rep., 108), it was natural that the time allowed exclusively for action by the government should begin to run when the contract had been completed, and the government, in its final adjustment and settlement according to established administrative methods, had determined what amount, if any, was due. Then the government would have ascertained the amount of its claim,if it had one, and could bring suit if desired. As such determinations are regularly made in the course of administration, nothing would seem to be gained by postponing the date, from which to reckon the six months, to the time of payment. Indeed, if an amount were found to be due from the contractor, and he was insolvent, there might be no payment, and, if payment were essential, there would be no date from which the time for the bringing of the creditor's action could be computed. * * *

"The pivotal words are not 'final payment,' but 'final settlement,' and in view of the significance of the latter term in administrative practice, it is hardly likely that it would have been used had it been intended to denote payment. See *United States vs. Illinois Surety Co.*, 195 Fed. 306, 309;*United States use of Chief All Over vs. Bailey*, 207 Fed., 782, 784; *United States ex rel. Brown-Ketcham Iron Works vs. Robinson* (C. C. A., 2d C.),*supra; United States use of Starrett-Fields Co. vs. Massachusetts Bonding & Ins. Co.*, 215 Fed., 241, 244; *United States use of John Davis Co. vs. Illinois Surety Co.* (C. C. A., 7th Cir.), 226 Fed., 653, 662. The word 'settlement,' in connection with public transactions and accounts, has been used from the beginning to describe administrative determination of the amount due. * * *

"We should not say, of course, that instances may not be found in which the word 'settlement' has been used in Acts of Congress in other senses, or in the sense of 'payment.' But it is apparent that the word 'settlement' in connection with public contracts and accounts, which are the subject of prescribed scrutiny for the purpose of ascertaining the rights and obligations of the United States, has a well defined meaning

as denoting the appropriate administrative determination with respect to the amount due. We think that the word 'final settlement' in the Act of 1905 had reference to the time of this determination when, so far as the government was concerned, the amount which was finally bound to pay or entitled to receive was fixed administratively by the proper authority. It is manifestly of the utmost importance that there should be no uncertainty in the time from which the six month period runs. The time of the final administrative determination of the amount due is a definite time, fixed by public record and readily ascertained. As an administrative matter it does not depend upon the consent or agreement of the other matter to the contract or account. The authority to make it may not be suspended, or held in abeyance, by refusal to agree. Whether the amount so fixed is due, in law and fact, undoubtedly remains a question to be adjudicated, if properly raised in judicial proceedings, but this does not affect the running of the time for bringing action under the statutory provision. * * *

"The regulation of the Treasury Department, as it appears from its circular issued for the information of persons interested in the claims for material and labor supplied in the prosecution of work on buildings under the control of that Department (Dept. Circ. No. 45, Sept. 12, 1912), is as follows: 'The Department treats as the date of final settlement mentioned in these Acts' (Referring to Acts of 1894 and 1905, *supra*) 'the date on which the Department approved basis of settlement under such contract recommended by the supervising architect, and orders payment accordingly.' "

In the case of *U. S. vs. Robinson*, 214 Fed., 38; 130 C. C. A., 434, the records showed that the Supervising Architect of the Treasury made a report on July 1st, 1908, recommending final settlement of Robinson's contract and making certain deductions for overtime damages, just as in the case at bar. This was approved by the Secretary of the Treasury on February 10th, 1909. The Court held that a suit instituted after the expiration of six months and within one

year from February 10th, 1909, was not premature, using this language:

"The sole question to be determined here is the meaning of the phrase 'final settlement of the contract' between the original contractor and the government. Does it mean that all outstanding controversies between the government and the contractor arising out of the contract must be finally determined? Or is it sufficient if the government has officially indicated that it intends to make no effort to collect anything further from the contract or from the bonds? The statute is awkwardly and inartifically expressed, but it seems to us it may be easily construed by applying the well recognized rule of ascertaining first what was the difficulty to remedy which the statute was passed, and, second, what was the method adopted to remedy such difficulty. Under the old Act, the United States was exposed to a loss of the security it had provided to secure a proper execution of the contracts it had let, in cases where the contractor became insolvent. Subcontractors and materialmen, sometimes before the work was even near completion, could proceed independently to secure their pay out of the proceeds of the bond, thereby reducing it to such an extent that the government might get nothing. Manifestly this was improvident legislation and it was undoubtedly to remedy this difficulty that the Act was passed. The new Act provided in the first place that suit to enforce the bond should be brought by the United States and materialmen be allowed merely to intervene in that suit. There might, of course, be instances where the government, making no claim against its contractor to recover damages, would bring no suit on the bond. In that case the new Act provides that the materialmen may themselves bring such suit. The more important part of the new Act is found in the clauses which provide in substance that no materialmen shall take one dollar out of the fund which the bond produces, until every dollar due the United States under the contract shall be fully paid. Keeping these clauses in mind, it seems to us that a reasonable interpretation

of the disputed phrases is to be readily found. In determining the time when materialmen may begin suit it would not do to fix it at some day 'after complete performance' merely. Defective work, damages for delay and other matters might give the United States some claim which it might not decide to prosecute until some time after the work was turned over, apparently complete. The date, was, therefore, fixed relatively to 'complete performance of the contract and *final settlement thereof.*' We take it that these italicized words refer to the time when the proper government officer, who has the final discretion in such matters, after examination of the facts, satisfies himself that the government will accept the work, as it is, without making any claim against the contractor for unfinished or imperfect work, damages for delay or what not and records that decision in some orderly way. Six months after that date, materialmen may begin suit. This construction protects the government against the defect of the old Act, viz., that its suit to recover might prove barren, because the money is gone. We can see no reason why Congress should have provided that, when the government claims nothing from contractor or sureties, all others must wait still further until some claim of the contractor against the government for having underpaid him reaches a conclusion. Such suit can in no way affect the funds provided by the bond out of which the government might have satisfied its claim, if it had any. In other words, we see no reason for holding that the final settlement must be mutual, in cases where the government makes no claim against the contractor. Under the statute whenever the government does make claim, it will be paid first, since the Act says: 'After paying the full amount due the United States, the remainder shall be distributed pro rata,' etc. The time fixed by the statute for beginning a sub-contractor's suit is any time within the period extending from six months after completion and final settlement to one year after completion and final settlement." * * *

"*What it had in mind was such a determination as to its rights* (Government's), *by the proper government officers, as might fairly be taken by all persons inter-*

ested as an authoritative announcement that the government was not a claimant to any part of the proceeds of the bond. When such a determination has been made and six months have elapsed thereafter, then the others interested in the fund may bring their suit." (Italics added.)

See also *U. S. vs. Winker*, 162 Fed., 401.
U. S. vs. Bailey, 207 Fed., 783.

In the case of *U. S. vs. Robinson* C. C. A. 2d Cir. 1918), 251 Fed., 461; 163 C. C. A., 637, the Court said.

"The word 'completion' in view of the purpose of the statute, and the attitude of the Courts in giving those purposes effect, must be construed as meaning that the contract was completed in the sense that the United States was satisfied that enough had been done to discharge the surety as to the United States. Any other construction would inevitably lead to the defeat of some of the essential purposes for which the statute was enacted. A sub-contractor who had performed his work would be compelled to wait for some indefinite period because some other sub-contractor, or the main contractor himself by reason of some default or dispute made necessary the reservation of a certain sum to make good that default or dispose of that dispute. It can readily be seen that in a contract involving, as did the contract at bar, over a million dollars, a sub-contractor could be kept out of his money because of a dispute over a comparatively small sum, notwithstanding the fact that the government was satisfied to the point where it no longed looked to the surety bonds. Remembering that the purpose of the statute in this regard was to protect the United States, it follows that there is no merit in the contention that the sub-contractor must wait to begin his action until disputes as to completion are finally settled, notwithstanding that the government on its part is entirely satisfied and approves the final settlement of the contract." *Robinson vs. U. S.* (C. C. A., 2d Cir., 1918), 251 Fed., 461, 163 C. C. A., 637.

And again, in the same case, the Court said:

"As between the United States and Robinson the latter may not be satisfied and may contest the position of the United States, as he is now doing in the Court of Claims; but such controversy on the facts in this case, the construction of the statute, the main contract and the sub-contracts, does not, in any manner affect the rights of the sub-contractors as against Robinson. So to hold is not to rewrite the contracts as between Robinson and the sub-contractors, as counsel earnestly contend, but is merely to give the language of the parties the meaning which they intended it should have, for they were referring directly to the contract with the United States with its necessary security and it is clear that the language thus used in the sub-contracts could never have been intended, in effect, to require the sub-contractors to waive their rights upon the bond, or to be postponed indefinitely after the United States had so acted as to discharge all liability on the bond against it and after the necessary six months had elapsed."

To the same effect see the case of *U. S. vs. Title Guaranty Co.*, (C. C. A., 7th Cir., 1918), 254 Fed., 958; 166 C. C. A., 320, wherein it was said:

"In the present case the building had been completed and the government had accepted the work and occupied the building prior to the date the final voucher was made out. The voucher was made out. The voucher was prepared by the Public Works Officer, who represented the government in the construction of the building. He termed his statement a 'final voucher.' Before sending [illegible] government he secured from the contractor a certificate of its correctness. It was then examined and approved by the acting chief of the bureau in charge of the construction.

"Made under these circumstances, when the building was fully completed, accepted and occupied by the government, at a time when the parties were concerned only in a final settlement of the contract, it is difficult to avoid the conclusion that the date of the approval

of this voucher constituted the date, from which the six months period ran. There may be a final settlement between the government and the contractor so as to fix the rights of a creditor under this Act notwithstanding the balance may be subject to change * * * *We conclude that in cases where the government has clearly indicated that it has no claim against the surety, a final settlement within the purview of this Act has taken place.*"

Counsel for plaintiffs in error devoted approximately one-half of their printed argument in the Court below in an attempt to demonstrate that certain items appear on the voucher mailed Arnold in September that do not appear on any previous voucher. They suggest the inference that the government first fixed or took into account these items in September and hence there could have been no final settlement in April. But the testimony of Commander Burrell clearly and unequivocally refutes this theory. He testified (p. 24) that he had been Public Works Officer at the Charleston Navy Yard since January 5th, 1920. That the letter authorizing final settlement was placed in his hands. That all but the last page of the final voucher was typed in April, 1920, after receipt of the letter of April 16th from the Bureau of Yards and Docks (pp. 29 and 30). The last page of the voucher contained two items which Arnold owed the government, one amounting to $216.10, and the other to $19 (pp. 30 and 31). That he had written Arnold under date of April 20th requesting payment of this item so that final voucher might be forwarded. (Ex. 18, p. 47.) That he received no reply to that letter (pp. 24 and 25) and subsequently in September under authority of the Bureau of Yards and Docks he deducted the items on the last page of the final voucher. He testified that the amount due Arnold was computed in April, that the settlement was made on the basis of the letter of April 16th from the Bureau, that the voucher was made up and the only thing done thereafter was to deduct the items amounting to $235.10 when Arnold failed to send check. (See pp. 29, 30, 32 and 33.) Surely this clearly shows that the government through its proper

officers had determined the amount due Arnold in April. Surely it shows that at that time the government "had ascertained the amount of its claim, if it had one, and could bring suit if it desired," which is the test laid down in *U. S. vs. Illinois Surety Co.*, 240 U. S., 214, *U. S. vs. Title Guaranty Co.*, 254 Fed., 958 and in *U. S. vs. Robinson* (C. C. A. 2d Cir.), 214 Fed., 38.

Was it necessary to communicate the figures to Arnold in order to fix the date of final settlement, as plaintiffs seem to contend? Does there have to be an agreement on the part of the contractor? Must the settlement be mutual? The Supreme Court in the Illinois Surety Company case says not in this language:

> *"It (final settlement) does not depend upon the consent or agreement of the other party to the contract or account. The authority to make it may not be suspended or held in abeyance by refusal to agree.* Whether the amount so fixed is due in law or fact undoubtedly remains a question to be adjudicated, if properly raised in judicial proceedings, but this does not affect the running of the time for bringing action under the statutory provision."

Again in *U. S. vs. Title Guaranty Surety Co.* (C. C. A., 7th Cir.), 254 Fed., 958, where the Court says:

> "There may be a final settlement between the government and the contractor so as to fix the right of a creditor notwithstanding the balance may be subject to change."

In this connection, the attention of the Court is invited to the case of *United States vs. R. H. Arnold and Globe Indemnity Company*, 268 Fed., 130. That case is from the District Court of Connecticut, and is practically identical with the case at bar. The letter relied upon to show final settlement in that case is practically the same as the one relied upon in the case at bar. In that case also, Arnold refused to sign the final voucher, and it accordingly never

went back to the Bureau of Yards and Docks for approval there. In that case also there was certain correspondence between Arnold and government officials after the letter authorizing final payment, and in that case also the government deducted certain items from Arnold's account after the date of final settlement. The identical points as to final settlement which are raised by Arnold in this case were raised by him in that case and were decided against him by Judge Thomas.

DEPARTMENT CONSTRUCTION.

The weight to be given a departmental construction of a doubtful statute seems to be embodied in the following rule:

"We have said that, when the meaning of a statute is doubtful, great weight should be given to the construction placed upon it by the department charged with its execution."

U. S. vs. Cerecedo Hermanos Y. Co., 209 U. S., 339.
See also *Jacobs vs. Prichard*, 233 U. S., 214.
U. S. vs. Hammers, 221 U. S., 225.
U. S. vs. Illinois Surety Co., 240 U. S., 214.

The administrative or departmental construction placed on the term "final settlement" is set forth in Dept. Circ. No. 45 (192) of the Treasury Dept. as follows:

"The department treats as the date of final settlement mentioned in said Acts the date on which the department approves the basis of settlement under contract recommended by the supervising architect and orders payment accordingly."

Again, defendant in error introduced in evidence a copy of the contract and bond certified under the seal of the Treasury Department. Such copies are not furnished creditors desiring to bring suit under this Act until after the expiration of five months after final settlement. Circular letter No. 36 of the Treasury Dept., dated April 4th, 1916, contains the following:

"A claimant who wishes to enter suit upon the bond of a contractor who has executed a formal contract and bond, and to be furnished with certified copies of such instruments, must file with the department the affidavit required by the Act of August 13, 1894 (as amended), setting forth that he has supplied material or labor in connection with the Federal building and has not been paid therefor. Such application must be made (or renewed) not earlier than five months after the authorization of final settlement, the date of which authorization will be communicated when made to those claimants who have notified the department of their claims.

"This postponement of the furnishing of the certified copies of the contract and bond for the suit upon the bond is because under said Acts the claimant cannot sue the contractor and his surety until six months after such final settlement, and such copies are withheld for said five months because in the meantime the claim may be disposed of and the labor of making such copies be, therefore, avoided. If the United States should institute suit against said contractor within six months next following such final settlement, the claimant would be notified of such suit and the desired certified copy forwarded upon notification to the department of the renewal of the application therefor."

Hence, it is not only clear that in the opinion of the Department final settlement had been authorized in April for the certified copies were not furnished until more than five months later, but the very fact that the government furnished the copies to a creditor for the purpose of bringing suit clearly indicates that the government had no intention of suing.

How, then, are plaintiffs in error hurt? The six months' provision, as has been demonstrated, was not for their benefit, but for that of the government. But the government, by furnishing the means of suit to a creditor, says, in effect: "I am not going to sue, as I have no claim on the bond. You have waited the six months in which the law gives me the prior right. Here is a copy of the contract and bond upon

which you may bring suit. My demands have been satisfied." When the government, for whose benefit the provision was made, says there has been a final settlement, will the contractor, whose substantial rights cannot possibly be prejudiced, be heard to say the contrary? If so, the "beneficent object of the statute" is defeated.

The position taken by plaintiffs in error is technical in the extreme. No question is made that Guimarin & Co., is not rightfully due the money remaining on their contract. In fact, plaintiff in error did not even put a witness on the stand. For two years they gave only evasive answers to Guimarin's demand for payment, but never denied the justness of his account. They did not deny it at the trial. And yet if this Court should hold that this suit was premature, not only may Guimarin lose his $9,000.00, should Arnold prove to be insolvent, but the other claims will fall as well. For, if it should be held that the final settlement was in September, the time for bringing another suit will have long since expired. The surety will be released absolutely, and if Arnold is sued in his place of residence he might successfully raise the statute of limitations of that jurisdiction as to the intervening claimants. Thus would the payment of admittedly just claims involving many thousand dollars be avoided.

Should Judge Smith have held that final settlement was in September and another suit had been brought by the sub-contractors on that theory, we have no doubt that plaintiffs in error would have just as strenuously contended that final settlement was in April as they now insist it was in September. Certainly it was never intended that this Act could be so construed as to place a beneficiary under its terms between any such Scylla and Charybdis.

EVIDENCE.

(a) Assignment of Error No. 4 (p.) complains of the admission of Exhibit 18. It will be seen from the Transcript of Record, page 23, and from the Index that Exhibit 18 is a letter from the Bureau of Yards and Docks, Washington, D. C., to the Public Works Officer, Charleston Navy Yards,

Charleston, S. C. It was an original letter, introduced in evidence through the Public Works Officer, Commander Burrell, but through error was not printed in the Transcript among the Exhibits, though counsel for plaintiffs in error had it printed as an addendum on their attention being called to the oversight. The oversight was probably occasioned on account of the similarity of the letter from the Charleston Navy Yard to Arnold, erroneously set out as Exhibit 18 in the Transcript, in which the original letter was quoted. It is clear, therefore, that counsel, in his assignment of error still labors under a misapprehension, though attention was fully called to the fact in the Court below.

(b) Complaint is made of the introduction of a carbon copy of statement mailed to Arnold & Co., by Guimarin. A notice to produce duly served on counsel for Arnold required the production of "all correspondence between R. H. Arnold & Co. and W. B. Guimarin & Co." How, then, can they complain of secondary evidence?

(c) Complaint is made of the introduction of letters from R. H. Arnold & Co., to Guimarin & Co., signed by A. F. Rosenheim, Office Manager, because of failure to show authority on the part of Rosenheim to sign them. The letters were on the letterhead of R. H. Arnold & Co. Mr. Guimarin testified (pp. 21 and 22) that he met Mr. Rosenheim in Arnold's office in Washington and that he thought he was the bookkeeper. That he was sitting in the office working at a desk. Mr. Heyward, of the firm of Guimarin & Co., testified as to a number of letters, which were put in evidence, signed by A. F. Rosenheim, which he received in due course of mail. The correspondence itself as set out in the transcript shows at least *prima facie* that Rosenheim was Arnold's agent. No attempt was made by Arnold at the trial to show that Rosenheim was not Arnold's agent although Mr. Stum, his auditor, was present at the trial.

(d) With regard to letters signed R. H. Arnold & Co., by Ralph E. Homann, suffice it to say that Mr. Homann's name appears on the letterhead as an apparent member of

the firm of R. H. Arnold & Co. In addition, Mr. Guimarin testified (p. 19) that he knew Mr. Homann and that he was the representative of the contractor on the ground.

(e) As to Mr. Stum, he was present in Court, and could certainly have disavowed his agency and authority if he had possessed neither.

PROOF OF SUB-CONTRACT.

Complaint is made that the District Court erred in admitting the sub-contract between Arnold and Guimarin in evidence upon the ground that there was no proper proof of Arnold's execution. It will be observed that Arnold's answer admits the execution of the paper. The Globe Indemnity Co. merely denied any knowledge of the sub-contract. The denial was insufficient, as pointed out by Judge Smith at the trial, on account of its failure to conform to Sec. 199 of the S. C. Code of Civil Procedure. That section is as follows: "The answer of the defendant must contain: 1. A general denial of each material allegation of the complaint controverted by the defendant, *or of any knowledge or information sufficient to form a belief.*" As was said in the decree of the Circuit Judge, in the case of *Land Mortgage Co. vs. Williams*, 35 S. C., 370, the Supreme Court affirming the same: "Under our Code it is only when a defendant has neither *knowledge* nor *information* to enable him to form a belief on the subject that he can controvert an allegation under this provision. Here the defendant states that he 'has no personal *knowledge* of the fact stated,' but does not allege want of *information* as to the facts alleged."

Aside from that, however, the paper was not such an instrument as required attesting witnesses and, hence, under the law of South Carolina it was not necessary to prove the same by one who had witnessed its execution. In the case of *Swancey vs. Parrish*, 62 S. C., 240, the Court, through Mr. Chief Justice McIver, said:

> "As to the first question, we think it clear that the Circuit Judge erred in ruling out the paper marked

Exhibit No. 2, purporting to be a chattel mortgage, upon the ground that the testimony of the subscribing witness was not offered to prove its execution. In the first place, at the time the transaction out of which this controversy arose there was no law requiring that a chattel mortgage should be executed in the presence of a subscribing witness (*Talmadge vs. Oliver*, 14 S. C., 522, and *McGowan vs. Reid*, 27 S. C., 262); and even if, as is suggested in the argument, the law has since been changed by statute, surely such statute could not affect a mortgage executed several years prior to its passage. If, then, the law did not require this mortgage to be executed in the presence of a subscribing witness, it would seem that this case does not fall within the rule applying to certain papers which must be executed in the presence of subscribing witnesses. This view seems to have been taken in the case of *Hall vs. Phelps*, 2 John., 451."

See also 21 R. C. L., 457.

In addition, Mr. Heyward testified that he had received a great many letters from Mr. Arnold and was familiar with his signature. That to the best of his knowledge Mr. Arnold had signed it. (P. 13.)

Counsel cited below the case of *Kolb vs. Jones*, 62 S. C., 193, as authority for the proposition that Arnold's admission of the sub-contract could not affect the surety. That case is not authority for any such principle. It merely holds that a quit-claim deed by several grantors may be introduced in evidence upon proof of execution by one of the grantors. The Globe Indemnity Company was not a party to the contract between Guimarin and Arnold. Surely written evidence of liability in the handwriting of the principal, and the execution of which is admitted by the principal, is admissible evidence against the surety and proves at least *prima facie* liability on its part. 21 R. C. L., 1092.

"Accounts, entries and written statements by the principal are *prima facie* evidence against his sureties, —32 Cyc., 137,—and in some States conclusive," cit-

ing *State vs. Teague*, 9 S. C., 149, and *Treasurer vs. Bates*, 2 Bail., 362.

All of the cases cited below by plaintiffs in error were inapplicable to the case at bar. Most of them involve deeds, requiring, of course, proof by attesting witnesses.

VARIANCE.

Counsel assumes in assignments of error 4 (o) and 4 (r) that the sum allowed Guimarin in the verdict is the same as the sum allowed Arnold by the Government for certain "extras" performed by Guimarin. Counsel clearly mistakes the facts. The record discloses three "extras" done by Guimarin, being termed "Changes C. D. & F" (pp. 26, 27 and 28). The record shows that in each instance Arnold notified Guimarin that the Government desired certain changes in the work and requested Guimarin to submit estimates covering the same. Guimarin made the estimates and submitted them to Arnold who, *prima facie* at least, agreed that the estimates were the basis for doing the work. (See Heyward's testimony, pages 15, 16, 17 and 18, and Exhibits 10, 11, 12, 13 and 16.) Change "C" amounted to $293.65. (See Ex. 2.) Mr. Guimarin testified (pp. 20 and 21) that the extra was done upon the basis of his estimate and was a fair value for the work done. He testified to the same effect as to the other changes. Change "D" amounted to $3,383.50 (Ex. 2), and change "F" to $29 (Ex. 2.) While Guimarin contended that the estimate furnished by him to Arnold and his acceptance of same estopped Arnold to deny that the amounts were not proper, in order to show further that the amounts charged Arnold by Guimarin were fair values in accordance with the sub-contract, Commander Burrell was permitted to testify that on Change "C" the government paid Arnold $290.95 (pp. 26, 27, 28). On Change "D" the government allowed Arnold $3,721.85, although Guimarin's charge was only $3,383.50 (p. 28), and on Change "F" the government allowed Arnold $61.05, Guimarin's charge being $29 (p. 29). This was certainly evidence of high probative value and Arnold did not make

the slightest attempt to show that the charges for the changes were not at a fair valuation. The evidence shows further that Arnold was allowed by the government for these extras performed by Guimarin the total sum of $4,073.85, while Guimarin charged Arnold only $3,706.12, or to put it differently that Arnold received a profit of approximately 10 per cent. on the work performed wholly by Guimarin. Will he now be heard to say after two years' silence and in the face of the proven facts that the "valuations" were not "fair?" He had an opportunity on the trial to prove to the contrary, but contented himself with not swearing a single witness.

ACCEPTANCE..

Not one scintilla of evidence was offered that Guimarin's work was not done in a workmanlike and acceptable manner. Under date of Dec. 6th, 1918, Guimarin wrote Arnold, in part as follows: (Ex. 19.)

> "We also wish to advise that we have completed this contract and extras, but the government representative refuses to accept it until the building is completed. We, therefore, drained all the pipes, put salt in the traps to keep them from freezing and left the work in care of your superintendent."

Is not Arnold's silence for two years, in the face of this letter ample evidence of acceptance, which, unrebutted, becomes conclusive? In addition, while the Court held that proof of acceptance of the building was perfectly immaterial (p. 25), it permitted Commander Burrell to testify that the building has been in use for over a year prior to the final audit of Arnold's accounts in April, 1920. Counsel seems to argue that because the government penalized Arnold for delay, Guimarin must suffer notwithstanding his work had long since been completed. Be that as it may, however, the letter from the Bureau of Yards and Docks to the Charleston Navy Yard (Ex. 18) shows that the building was accepted by the government on November 30th, 1918.

The statement was made in the Court below by plaintiffs in error that a deduction of $6,457.50 was made on the final voucher for unfinished work. An examination of the voucher will show (p. 53) that this was a credit taken by the government on account of Change "H." Evidently, therefore, it is not for unfinished work, but a deduction made in accordance with the contract on account of the elimination of certain work contemplated in the original contract. Be that as it may, however, no claim is made that any of Guimarin's work was unfinished and surely the contractor would not be heard to say that Guimarin's money was not due because the government had some claim against him—the contractor—on account of his own default. The principle that a party may not take advantage of his own wrong would seem to be applicable.

STATED FACTS.

On December 19th, 1918, Mr. Heyward prepared a statement of Arnold's account which was mailed to him (p. 15) and in due course received an acknowledgment by letter dated December 21st. (Ex 3.) It is true that the writer said he had "no authority to act in the matter," but the context shows that he merely meant that he could not pay the account during the absence from the city of Mr. Arnold and Mr. Homann. He goes on to say, however, that the statement "will doubtless receive prompt attention upon their return the early part of January."

The record shows a constant stream of letters from Guimarin & Co., from that time on demanding payment on the part of Arnold. The replies do not question the correctness of the account, but merely evade the issue on the ground that the government had not signified an official acceptance of the building. As was pointed out, however, by Mr. Heyward in his letter to Arnold of April 26th, 1919 (Ex. 8), Arnold had received from the government the money for the work performed by Guimarin, which fact was borne out by the government records. This fact was not questioned by Arnold, and yet the duty rested upon him to speak then

if he was to speak at all. If profound silence ever amounts to acquiescence it assuredly does in this case.

Certain assignments of error complain of failure of proof of authority of Arnold's employees to sign certain letters in evidence. They were on Arnold's letterheads and were signed by persons proved to be in his employ and one of whom was apparently his partner. Certainly this was *prima facie* proof of authority requiring rebuttal on Arnold's part.

REFERENCE TO MASTER.

The assignments of error under this head have become academic in view of the modification of the judgment of the District Court. The case of *Miller vs. Bonding Co.* (*supra*), had not been decided when this case was tried and Judge Smith only followed the well established practice in South Carolina. The Circuit Court of Appeals having held that plaintiffs in error are entitled to a jury trial as to the intervening claims, we are at a loss to understand wherein they still feel aggrieved, especially as the penalty of the bond is considerably in excess of all claims. Guimarin's claim having already been tried before a jury, nothing would be gained by sending it back for a re-trial.

CONCLUSION.

In the recent case of *Illinois Surety Co. vs. John Davis Co.*, 244 U. S., 376, the Court used this language: "In every case which has come before this Court, where labor and materials were actually furnished for and used in part performance of the work contemplated in the bond, recovery was allowed, if the suit was brought within the period prescribed by the act. Technical rules otherwise protecting sureties from liability have never been applied in proceedings under this statute."

In the case at bar, Guimarin furnished the materials and performed the work contemplated by the sub-contract with Arnold. For approximately four years he has been kept out of the money which he expended. The government has

not only paid Arnold for the labor and material furnished by Guimarin, but has paid him a profit on it. Or to put it differently, for four years Arnold has been using Guimarin's money.

Is any evidence offered that Guimarin did not furnish the materials and labor? Is any evidence offered that his work was not entirely acceptable? Would the government have paid Arnold for it if it had not been acceptable? Is there anywhere any question made as to the correctness of Guimarin's account? Whose actions in this matter should more commend them to this Court—Guimarin, who proves a just claim, or Arnold, who does not offer a single witness?

It is earnestly submitted that Arnold and his surety should not be permitted to escape the payment of a concededly just claim upon a technicality. When the party most interested, the government, for whose benefit the provision was made, informs Guimarin that the contract of Arnold has been "finally settled" and that he may bring his suit, will Arnold be heard to say the contrary? Is the phrase "final settlement" to be made a screen behind which a recalcitrant debtor may hide? Must a creditor under the act rely upon the word of the government at his extreme peril? If so, the act is a pit-fall instead of a refuge and penalizes those whom it was intended to protect. In our judgment this case is controlled by the principle announced by this Court in the case of *Alexander Bryant Co. vs. N. Y. Steam Fitting Co.*, 235 U. S., 327, when it said:

> "The Act is intended to be highly remedial. Its purpose is simple and beneficial. It is to give a remedy to materialmen and laborers on the bond of the original contractor, and a reasonable time to enforce it."

Respectfully submitted,

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ARNOLD, DOING BUSINESS AS R. H. ARNOLD COMPANY, ET AL. *v.* UNITED STATES FOR THE USE OF W. B. GUIMARIN & COMPANY.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 31. Argued February 27, 1923.—Decided December 10, 1923.

A judgment of the Circuit Court of Appeals, in an action on a contractor's bond brought by a creditor under the Federal Materialmen's Act, which affirms the District Court in holding the action not premature and in adjudicating the amount due the plaintiff, but remands the case for jury trial of the claims of intervening creditors, and settles neither the amount of the claims to be allowed against the bond nor the proportionate share of each creditor if the bond prove inadequate to pay all, does not finally and completely dispose of the subject matter of the litigation, either as to the parties or the causes of action involved, and cannot be brought here by writ of error. P. 432.

Writ of error to review 280 Fed. 338, dismissed.

ERROR to a judgment of the Circuit Court of Appeals which modified a judgment of the District Court in an action under the Materialmen's Act, and remanded the cause for further proceedings.

Mr. William Henry White, for plaintiffs in error, submitted. *Mr. Ellwood P. Morey* and *Mr. John I. Cosgrove* were also on the briefs.

Mr. Frank G. Tompkins, with whom *Mr. M. G. McDonald* was on the brief, for defendant in error.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This action was brought by a subcontractor, in the name of the United States, in a Federal District Court in South Carolina, under the Materialmen's Act of August 13, 1894, c. 280, 28 Stat. 278, as amended by the

Act of February 24, 1905, c. 778, 33 Stat. 811, to recover on a contractor's bond for the construction of a naval storehouse. Judgment was had against the contractor and his surety for the full penalty of the bond. The Circuit Court of Appeals modified this judgment and remanded the cause to the District Court for further proceedings. 280 Fed. 338.

The case has been brought here by writ of error, and many errors have been assigned going to the merits of the controversy. The record, however, presents the preliminary question whether the judgment of the Circuit Court of Appeals has such finality and completeness that it may be reviewed by this Court under the writ.

The Materialmen's Act, as amended, provides [1] that the usual penal bond executed by anyone entering into a contract with the United States for the construction of any public work shall contain an additional obligation for the payment by the contractor of all persons supplying labor and materials in the prosecution of the work. Any such person not thus paid may intervene in any action instituted by the United States on the bond and obtain judgment *pro rata* with other intervenors, subject to the priority of the claim of the United States. And if no suit is brought by the United States within six months from the completion and final settlement of the contract, any such person shall have a right of action upon the bond, and may, within a specified time, bring suit against the contractor and his surety, in the name of the United States, for his use and benefit, in the federal court of the district in which the contract was performed and prosecute the same to final judgment and execution. Where suit is so instituted by a creditor, only one action shall be brought, and any creditor may file his claim therein and be made a party thereto within

[1] The amended act is set forth in full in the margin of the opinion in *Texas Cement Co.* v. *McCord*, 233 U. S. 157, 161, n. 1.

a specified time. And if the recovery on the bond is inadequate to pay the amount due to all of said creditors, judgment shall be given to each creditor *pro rata* of the amount of the recovery.

The independent right of action given a materialman or laborer by the amended act, is to be enforced in a proceeding at law, and not in equity. *Illinois Surety Co.* v. *Peeler*, 240 U. S. 214, 224. All claims under the bond are to be presented in a single action, in which every claimant may intervene and be heard as a party; and this action is to proceed as a single case, in which the several claimants are not entitled to separate trials as of right, although in exceptional instances, for special and persuasive reasons, the distinct causes of action asserted by them may be made the subject of separate trials. *Miller* v. *American Bonding Co.*, 257 U. S. 304, 307, 308.

The situation presented in the present case is this: Arnold, one of the plaintiffs in error, in October, 1917, entered into a contract with the United States to construct a storehouse in the Navy Yard at Charleston, South Carolina. He executed a bond for $65,190 in conformity to the act with the Globe Indemnity Co., the other plaintiff in error, as surety.

In November, 1920, the firm of Guimarin & Co., as use plaintiff, brought this action on the bond in the Federal District Court at Charleston, against Arnold and the Indemnity Company, to recover a balance $7,725.52, with interest, alleged to be due it from Arnold under a subcontract for supplying the plumbing and other material in the storehouse. The complaint alleged that Arnold's contract with the United States had been completely performed and finally settled on April 17, 1920, and that the United States had not entered suit on the bond. The defendants answered, denying liability on

various grounds, specifically denying that Arnold's contract had been finally settled on April 17, or that more than six months had elapsed since its completion or final settlement, and averring that the court was without jurisdiction because no such final settlement had been made.[2]

Various other creditors filed intervening petitions in the case, setting up their claims; but neither the number nor the amount of these claims appears in the record.

At the hearing, in June 1921, the court held, over the defendant's objection, that the principal cause should be tried first, and that "if a breach of the bond was established" judgment could then be rendered and other claimants permitted to assert their several claims "to share in the fund thus created."[3] The case was then tried upon the issues relating to the claim of Guimarin & Co., and a verdict rendered by direction, finding that Arnold's contract had been completely performed and finally settled on April 16, 1920, and that Guimarin & Co. was entitled to recover under its subcontract $7,693.31, with interest. The court thereupon, without entering any separate judgment upon this verdict in favor of Guimarin & Co., ordered that the cause be referred to a special master to take proof and report as to the claims of intervening creditors, and entered a judgment that the United States recover of the defendants $65,190, the penalty of the bond, with costs.

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[2] Under the provisions of the amended act an action brought by a creditor before six months have expired from the time of the completion and final settlement of the principal contracts, is premature and cannot be sustained. *Texas Cement Co.* v. *McCord*, 233 U. S. 157, 163; *Illinois Surety Co.* v. *Peeler*, *supra*, p. 217.

[3] This was several months before the decision in *Miller* v. *American Bonding Co.*, *supra*. The defendants stated, at the time, that if the claims of all intervenors were not tried in the main case before the same jury, they would oppose any subsequent trial of claims not then presented on the ground that such claims would be "foreclosed."

Arnold and the Indemnity Company, before execution of the order of reference, sued out a writ of error for the review of this judgment by the Circuit Court of Appeals. There appears to have been no citation under this writ to the intervening creditors and no appearance by them in the Circuit Court of Appeals.[4]

The Circuit Court of Appeals, after disposing, adversely to Arnold and the Indemnity Company, of various assignments of error relating to the alleged prematurity of the suit and the claim of Guimarin & Co., said:

"Considering the action to be taken upon the judgment in this case, it seems to us, the same having been fully tried so far as the plaintiffs are concerned, . . . that the action of the lower court should not be disturbed in its ascertainment of the amount due plaintiffs. The court instructed the jury to find for the plaintiffs, and properly so, . . . and the judgment should be treated as that of a judgment on the bond, along with other petitioners, when judgments are rendered in their favor. The judgment . . . directing the reference to a master to pass upon the claims of the several petitioners, should be modified, and a jury trial awarded, to determine in a single trial the amounts due the several petitioners. . . . The court's idea, manifestly, in entering this judgment for the full penalty, was that, under South Carolina practice, such action constituted a forfeiture of the bond, and enabled persons in the position of the plaintiffs and the petitioners to come in and assert their claims, the aggregate not to exceed the amount of the bond, so far as the surety was concerned. . . . It is evident . . . that

[4] The record does not contain either the writ of error or the citation, but shows the entry of appearance for "the defendant in error." The Circuit Court of Appeals in its opinion refers to Guimarin & Co. as "the defendant in error"; and the citation under the present writ of error is directed only to the United States for the use of Guimarin & Co.

the court held, and meant to hold, that the contract between R. H. Arnold & Co. and the United States . . . had been fully performed, and final settlement made on the 16th day of April, 1920, and that there was due to the plaintiffs from the general contractor the sum of $7,693.31, with interest . . . , and that, suit having been instituted upon the bond in the name of the United States, suing for the use of W. B. Guimarin & Co., judgment should be entered in favor of the United States for the sum of $65,190, the penal sum of the bond . . . , to be discharged by the payment to the said Guimarin & Co. of $7,693.31, with interest . . . until paid, together with costs, . . . ; it appearing[*] that the plaintiffs' and petitioners' claims combined do not exceed the penal sum of said bond. We think the judgment as thus understood is correct and should be so modified, and that the several petitioners, upon ascertainment of the amounts respectively due them, should be entitled to like judgments; the total judgments, including that of the plaintiffs herein, not to exceed the penalty of the bond. The decision of the lower court, as herein modified, will be approved and affirmed."

Judgment was thereupon entered modifying the judgment of the District Court "as set forth in the opinion," affirming it as modified, and remanding the cause for further proceedings in accordance with the opinion.

It is evident that this judgment of the Circuit Court of Appeals does not finally and completely dispose of the subject matter of the litigation, either as to the parties or the causes of action involved. Looking to its substance, it adjudges, at the most, that the action was not prematurely brought and is to be sustained for the benefit of Guimarin & Co. and of the intervening creditors; and that

[*] The words "it appearing" are manifestly used, as the context shows, in the sense of "if it appears"; the amount of the petitioners' claims as already stated, not appearing in the record.

the defendants are liable on the bond for the amount found by the verdict to be due Guimarin & Co. and for such additional amounts as may hereafter be found, on the jury trial awarded, to be due the intervening creditors, the aggregate amount of such recoveries, however, not to exceed the penalty of the bond. It does not adjudge the amounts which either Guimarin & Co. or the intervening creditors will ultimately be entitled to recover on the bond; but for these purposes remands the cause to the District Court for further proceedings. If, upon the ascertainment of the amounts due the intervening creditors, the aggregate amount of the claims of Guimarin & Co. and of the intervening creditors are less than the penalty of the bond, it is adjudged that they will be entitled to recoveries for the full amount of their claims; but if the aggregate amount exceeds the penalty of the bond they can only recover, under the express provision of the statute, *pro rata* of the amount of such penalty. In short, this judgment does not determine the ultimate amount which Guimarin & Co. may recover on the bond, the amounts which the intervening creditors may recover, or the amount of the ultimate liability of the defendants on the bond; it adjudicates neither the amount of the claims which are to be finally allowed against the fund created by the bond, nor the proportionate share of each creditor in such fund if inadequate to pay the amounts due all the creditors.

In *La Bourgogne*, 210 U. S. 95, 112, a proceeding in admiralty by the owner of a vessel for limitation of liability arising from a collision, it was held that a decree adjudging that the owner was entitled to the limitation sought, declaring that one class of claims could not be proved against the fund and remitting all questions concerning other claims for proof prior to final decree, was not a decree from which an appeal lay to this Court, since the case not only involved primarily the owner's right to limitation of lia-

bility, but "further involved the nature and amount of claims which were to be allowed against the fund," which had not been finally disposed of by the decree. So here, the action brought by Guimarin & Co. involves not merely the liability of the defendants on the bond, but also the amount of the claims which may be allowed against the fund created by the bond, which cannot be determined until after further proceedings are had in the District Court on the remanding of the cause pursuant to the judgment of the Circuit Court of Appeals.

It is well settled that a case may not be brought here by writ of error or appeal in fragments; that to be reviewable a judgment or decree must be not only final, but complete, that is, final not only as to all the parties, but as to the whole subject matter and as to all the causes of action involved; and that if the judgment or decree be not thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction. *Hohorst* v. *Packet Co.*, 148 U. S. 262, 264; *Collins* v. *Miller*, 252 U. S. 364, 370; *Oneida Navigation Corporation* v. *Job*, 252 U. S. 521, 522; and cases therein cited.

And it is clear that the present case does not come within the seeming exception to this rule that an adjudication final in its nature as to a matter distinct from the general subject of the litigation and affecting only the parties to the particular controversy, may be reviewed without awaiting the determination of the general litigation. See *Williams* v. *Morgan*, 111 U. S. 684, 699, and *Collins* v. *Miller*, *supra*, p. 371. There has been no final adjudication of the amount which Guimarin & Co. is entitled to recover on the bond; and, furthermore, its right to a recovery is not distinct from the general subject of the litigation, but involves the determination of questions affecting the intervening creditors, who are likewise parties to the suit, as well as itself, and which, under the statute, are to be determined in a single action.

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For these reasons—although, as in *Oneida Navigation Corporation* v. *Job*, *supra*, the objection was not raised by the defendant in error[6]—the writ of error to the Circuit Court of Appeals is

Dismissed for want of jurisdiction.